Supreme Court, U.S.
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In The

# Supreme Court of the United States

October Term, 1998

JORDAN BROWER, an individual,

*Petitioner,*

v.

STATE OF WASHINGTON, RALPH MUNRO, Secretary of State, and FOOTBALL NORTHWEST, a Washington general partnership,

*Respondents.*

**On Petition For Writ Of Certiorari To The Supreme Court Of Washington**

## PETITION FOR WRIT OF CERTIORARI

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## QUESTIONS PRESENTED

In this case the State of Washington enacted legislation for the construction and lease of a football stadium favorable to a private party which was referred to the people of the state at a special election. The election was limited solely to the referred legislation. The election only took place on the condition that the benefitting private party approved of the legislation referred, agreed with the timing of the election, and agreed to pay the State for the entire cost of the election. In doing so, the legislature said it was neutral regarding the legislation but nevertheless said the election was an emergency thus preventing a referendum on the special election under the State Constitution which might have delayed the election.

Does the State of Washington violate the Equal Protection Clause of the Fourteenth Amendment when it provides for a special election regarding a special ballot for legislation favorable to a private party, upon the conditions that the party, who is unelected, (1) agrees with the legislation, (2) agrees with the timing of the election, and (3) agrees to pay state for the cost of the election?

Does the State of Washington violate the First Amendment and Due Process Clause of the Fourteenth Amendment when it sets the timing of a special election regarding a special ballot for legislation favorable to a private party on such short notice that it is impossible for an opponent to raise funds and mount a campaign in opposition to the legislation?

## QUESTIONS PRESENTED – Continued

Does the State of Washington violate First the Amendment and the Due Process Clause of the Fourteenth Amendment when it prevents a citizen from exercising a constitutionally created right of referendum on legislation by declaring that the legislation is an emergency when, in fact, the legislature has declared that it was neutral regarding the outcome of the legislation?

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## PETITION FOR WRIT OF CERTIORARI

Jordan Brower ("Brower") respectfully prays that a writ of certiorari issue to review the judgment and opinion of the Washington State Supreme Court entered in this case on December 24, 1998.

## I. OPINIONS AND ORDERS BELOW

The opinion of the Washington Supreme Court (App. A, *infra*, 1a) is reported at 137 Wn.2d 44, 969 P.2d 42 (1998).

## II. JURISDICTION

The Washington Supreme Court issued its opinion on December 24, 1998. The jurisdiction of this court is invoked under 28 U.S.C. § 1257(a).

## III. CONSTITUTIONAL PROVISIONS AND ORDINANCES INVOLVED

*United States Constitution*

Amendment One

Congress shall make no law . . . abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Amendment Fourteen, Section 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No

State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

*Washington State Constitution*

Article II, Section 1(b)

The legislative authority of the state of Washington shall be vested in the legislature, consisting of a senate and house of representatives, which shall be called the legislature of the state of Washington, but the people reserve to themselves the power to propose bills, laws, and to enact or reject the same at the polls, independent of the legislature, and also reserve power, at their own option, to approve or reject at the polls any act, item, section, or part of any bill, act, or law passed by the legislature.

. . .

(b) Referendum. The second power reserved by the people is the referendum, and it may be ordered on any act, bill, law, or any part thereof passed by the legislature, except such laws as may be necessary for the immediate preservation of the public peace, health or safety, support of the state government and its existing public institutions, either by petition signed by the required percentage of the legal voters, or by the legislature as other bills are enacted:

report by June 30, 1997. (Pet.'s App. at 6). Petitioner did not initially challenge either aspect of this Order. Instead, she agreed to execute a medical records release and requested an extension until September 5, 1997, the Friday before the next status conference, to provide an expert report – representing to the District Court that she had retained an expert. (App. at 2-3).[3]

Petitioner did not produce any medical records, execute a release, or produce an expert report. Instead, she recanted her previous representations, stating that she had not been able to retain an expert and arguing that she should either not be required to produce an expert report or be given more time to retain an expert. (App. at 6). The District Court rejected these arguments, and ordered Petitioner to comply, but Petitioner refused.

Instead, Petitioner produced a handful of medical records and filed motions seeking to set aside the District Court's order, to compel production of documents from Respondent, and for a protective order concerning her medical records. (Docs. 13-15, 21-23).[4] A hearing was held

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[3] Citations to the appendix to this Opposition are referred to as "App. at ___."

[4] The appeal in the court below was handled under an experimental procedure whereby the record was not sequentially numbered and provided to all counsel. Instead, counsel were instructed to cite to the District Court record utilizing the District Court's docket entry numbers. Therefore, citations to the District Court record in this opposition follow this same practice. A copy of the District Court's docket sheet is attached as pages 11-19 to the appendix to the Petition. Some citations to the District Court's record that are also included as part of the appendix to this Opposition are referred to as "App. at ___ (Doc. ___)."

At the early stages of the proceedings, well before the special election called for under the Act, Brower sought a determination concerning the constitutionality of the Act and the constitutionality of the election contemplated by the Act. App. A, *infra*, 5a.

After the election the trial court made its decision in the case denying Brower's requests on cross motions for summary judgment. The case was appealed by direct review to the Washington State Supreme Court. App. A, *infra*, 1a. The federal questions were addressed at the trial court and by the Washington State Supreme Court. App. A, *infra*, 15a, 19a, 21a, 24a, 25a, and 31a.

**The Act**

The referred provisions of the Act called for the construction of a football stadium in Seattle, Washington which would be under the control of the "team affiliate" for use by its National Football League football team, The Seattle Seahawks.

The term "team affiliate" was defined in the Act in § 101(10) as "a professional football team that will use the stadium and exhibition center, and any affiliate of the team designated by the team." App. B, *infra*, 50a. An "affiliate of the team" was defined as "any person or entity that controls, is controlled by, or is under common control with the team." Here the team affiliate was Football Northwest, a Washington general partnership "indirectly wholly-owned by Mr. Paul G. Allen of Mercer Island, Washington" as stated under affidavit by Allen D. Isreal the Assistant Secretary and principal attorney for Football Northwest, LLC. App. D, *infra*, 129a.

The election was special and limited. That is, it was to occur on a special date which was to take place on, or prior to, June 20, 1997. Act § 607(1), App. B, *infra*, 117a. Furthermore, the ballot at the special election was limited to the referred provisions. No other ballot proposition could be added to the ballot proposition. The Act provided that "[t]he special election shall be limited to submission of this act to the people." *Id.*

The proposal was null and void unless the team affiliate agreed to pay the full cost of the election. The team affiliate had complete ability to make the referendum election null and void or, stated another way, to veto the referendum. Section 606 provided:

> Notwithstanding any other provision of this act, this act shall be null and void in its entirety unless the team affiliate as defined in section 101 of this act enters into an agreement with the secretary of state to reimburse the state and the counties for the full cost of the special election to be held on or before June 20, 1997.

App. B, *infra*, 116a.

The Legislature, itself, was neutral regarding the Act. Act § 605, App. B, *infra*, 116a. The Legislature said that it "neither affirms nor refutes the value of this proposal, and by this legislation simply expresses its intent to provide the voter of the state of Washington an opportunity to express the voter's decision. It is also expressed that many legislators might personally vote against this proposal at the polls, or they might not." *Id.*

Despite this neutrality, the Legislature declared that two of its sections were emergencies – (1) Section 606

*National Hockey League v. Metropolitan Hockey Club*, 427 U.S. 639, 643 (1976) (per curiam). Petitioner, if anyone, should be aware of the District Court's authority, because, in *Woodson*, the Fifth Circuit affirmed the district court's dismissal of the plaintiff's claims based on Petitioner's similar failures to follow the district court's orders.

In *Woodson*, Petitioner (1) failed to timely designate experts or produce expert reports, arguing that the plaintiff did not have to produce reports that did not exist;[5] (2) failed to produce her client for a court ordered deposition;[6] (3) refused, following settlement, to comply with two court orders to secure a final release of all claims, instead moving to enforce her version of the settlement agreement and for sanctions against the defendants; and (4) failed to appear for a subsequent hearing based on the pendency of a petition for en banc rehearing of a mandamus petition she had filed in the Fifth Circuit seeking recusal of the district judge (which the Fifth Circuit had denied). "Under the circumstances, the district court viewed [Petitioner's] failure to appear as 'yet another obstruction to the progress of this plagued and hostile litigation' "[7] and dismissed the plaintiff's claims with

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[5] 57 F.3d at 1408-09. This argument, which was rejected by the *Woodson* court, is essentially the same as her argument in this case that the District Court could not order her to produce an expert report because it lacked the power to order her to engage in discovery. *See* Pet. at 10, 12.

[6] *Id.* at 1410.

[7] *Id.* at 1415.

## V. REASONS FOR GRANTING THE PETITION

In this case the State of Washington provided a private party with access to a ballot at a statewide election on the condition that a fee be paid to the State. The fee was the cost of the election, approximately $4.2 million. The election was for an act which would benefit the private party. The election was special in that it took place on a special date outside of any normal election time and it was special in that the legislation which was favorable to the private party was the only matter, under the terms of the Act, that could be placed on the ballot.

This case presents fundamental issues concerning Equal Protection and First Amendment Rights secured to citizens under the Fourteenth Amendment.

### A. Ballot Access Based Upon Wealth

The election on the referendum would not have taken place *but for* the agreement of the party benefitting from the legislation to pay the State and its several counties for the cost of the election. That is, the State acceded to a request for ballot access based upon the agreement of the party who was to benefit by the special legislation to be placed on the ballot to pay the State for the cost of the election – in this case the sum of $4.2 million.

This undertaking would not have taken place but for the agreement of the benefitting party to the legislation and the timing of the special election. This election is a violation of Brower's constitutionally protected rights of Equal Protection and Freedom of Speech.

The owner of the team affiliate, Mr. Paul Allen, controlled access to the ballot with respect of the referendum – the legislation referred. This control was measured on the basis of the wealth of the team affiliate. That is, Mr. Allen and the team affiliate secured the benefit of the ballot by agreeing to reimburse the State and the counties of the State for the full cost of the election.

It has long been held that ballot access cannot be based upon a person's wealth. In *Harper v. Virginia Board of Elections*, 383 U.S. 663 (1966) the court held that "a State violates the Equal Protection Clause of the Fourteenth Amendment whenever it makes the affluence of the voter or the payment of a fee an electoral standard." *Id.* at 666. Justice Douglas, writing for the majority, stated the principle that "wealth or fee paying has . . . no relation to voting qualifications; the right to vote is too precious, too fundamental to be burdened or conditioned." *Id.* at 670.

In *Lubin v. Panish*, 415 U.S. 709 (1979) the Court struck down a California statute that required an indigent candidate for a political office to pay a filing fee so that the candidate could secure a ballot position for a primary election.

If a state may not condition access to a ballot based upon wealth, can it grant access to a ballot based upon wealth? If a citizen cannot be prevented from access based upon wealth, can a citizen be granted ballot access based upon wealth?

The impermissible fee in the above cases acted as a limitation on a citizen's constitutionally protected rights. In this instance the same is true. The fee gives only those

who can pay access to the ballot. The condition works to deny access to anyone who cannot pay.

Moreover, access based upon the payment of a fee is all the more insidious when the access provided by the fee (1) is access for an election for legislation which benefits the person paying, (2) provides for special election timing – here, mere weeks away from the grant of the ballot, and (3) specially limits the election so that it is one which is solely for the purpose of the act which will benefit the person purchasing the election.

If a state cannot condition access to a ballot on the basis of a fee, a state cannot grant access to a ballot based upon the payment of fee.

The State, in fact, made legislation and a ballot for such legislation available for a price. The legislation was special to the person who controlled the entity which would directly benefit from the passage of the legislation in that it provided for submission of the measure at a special election and limited the election to the measure. The benefit was accorded on the basis of consideration, wealth.

### B. Election Timing

Another reason why the Court should review the decision pertains to the denial of Brower's rights of freedom of speech and political association and participation having to do with the timing of the election.

The Act was passed on April 26, 1997. The mail-in election began in several counties less than 30 days later with the final election culminating on June 17, 1997.

There was no way Brower nor anyone else (other than another of the world's wealthiest persons) could effectively campaign against the referred legislation.

In *Buckley v. Valeo,* 424 U.S. 1 (1976) (per curiam) the Court concluded that campaign expenditure and contribution limitations impinged upon First Amendment Rights because large sums are indispensable for mass communication needed for contemporary political campaigns. Similarly, the timing of an election may impinge upon first amendment rights because it takes at least some time to raise the sums which are indispensable for mass communication needed for contemporary political campaigns.

There was no way Brower could have raised, in the limited time between the passage of the Act and the election, the necessary funds to campaign against the measure. His speech and association were so impermissibly confined as to render them non-existent.

The accelerated timing of the special election violated Brower's rights of freedom of speech and association. Under no conceivable circumstances could Brower, or any other citizen for that matter, gather the resources to mount a campaign to fight against the approval of the legislation. His ability to speak, to associate, to secure the assistance of others could in no way be achieved within, the time frame of the quick election set forth in the Act, in any meaningful scale when compared to the monied campaign favoring the ballot measure.

### C. One Person One Vote

In *Reynolds v. Sims*, 377 U.S. 533, 566 (1964) the Court held that "the opportunity for equal participation by all voters in the election of state legislators" is required. The principle of equal participation is violated here. Mr. Allen, the person who controlled the "team affiliate," had a power of participation which surpassed the power of Brower and, indeed, all of the other voters of the State of Washington. Mr. Allen had the power to nullify the entire ballot, that is, he had the power to defeat the entire referendum. Section 606 provided that the referendum "shall be null and void" unless the team affiliate entered into an agreement to "reimburse the state and the counties for the full cost of the special election to be held on or before June 20, 1997." Act § 606. App. B, *infra*, 116a.

This violates Brower's rights of equal participation protected by the Equal Protection Clause of the Fourteenth Amendment.

And, it should be added that this principle of equal participation is violated from the standpoint of another perspective. The team affiliate has, in fact, *a legislative power* with regard to the referred legislation. By a decision not to reimburse the state the team affiliate could defeat, or veto, the referendum. Act § 606. *Id.*

The principle of one person one vote should be applied to every office or position under which the holder has authority to exercise legislative power. The power to veto legislation, the power to prevent legislation from coming into existence, is a legislative power. *Gottstein v. Lister*, 88 Wash. 462, 153 P. 595 (1915). Because it is

legislative power, it must only be held by a person holding an elected position of legislation.

In *Sailors v. Board of Education*, 387 U.S. 105 (1967), a case challenging the selection of a county school board, the Court left open the question as to whether there were offices or positions which were legislative that must be elective instead of appointive. *Id.*, at 109-10.[1]

The selection process by which the person controlling the team affiliate was selected violates the principle of one person one vote. Applying these principles, the Court should determine that a person or group which is to be empowered to engage in the most basic of legislative acts, veto of legislation, must be based upon the one person one vote standard. That is, the person or group should be selected by popular election. Here, the "office" with the power to veto the legislation should be elected, and elected under principles of one person one vote.

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[1] The Court said:

> We need not decide at the present time whether a State may constitute a local legislative body through the appointive, rather than the elective, process. We reserve that question for other cases such as *Board of Supervisors v. Bianchi*, ante, [387 U.S. 97 (1967)] p. 97, which we have disposed of on jurisdictional grounds. We do not have that question here, as the County Board of Education performs essentially administrative functions; and while they are important, they are not legislative in the classical sense.

**D. The Right of Referendum**

Initiative petition circulation is "core political speech" which involves "interactive communication concerning political change." *Buckley v. American Constitutional Law Foundation*, ___ U.S. ___ (No. 97-930, Decided January 12, 1999); *Meyer v. Grant*, 486 U.S. 414 (1988). The Court has said that "First Amendment protection for such interaction, . . . is 'at its zenith.' " *Meyer*, at 425.

Similarly, the right of referendum, like the right of initiative and right to circulate a petition for an initiative, is a constitutionally protected right of core political speech, limitations or infringements on which are subject to strict scrutiny.

Here, the Washington State Legislature and Supreme Court have impermissibly destroyed Brower's right of referendum under Wash. Const. Art. II, Section 1(b). This section provides a right of referendum on legislation except where there is an emergency. Despite the legislative statement of neutrality regarding the legislation in Section 605 of the Act (App. B, *infra*, 116a) the court held that the legislation regarding a vote on the ballot measure was an emergency and thus the state constitutional right of referendum was destroyed.

Justice Sanders, of the Washington Supreme Court, understood what the majority had done. In this case Justice Sanders said "here we go one step beyond *CLEAN-I*[2] by actually discounting a legislative declaration incompatible with the existence of the alleged

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[2] *CLEAN v. State*, 130 Wn.2d 782, 928 P.2d 1054 (1996); *see also CLEAN v. City of Spokane*, 133 Wn.2d 455, 947 P.2d 1169 (1997), *cert. denied*, 119 S. Ct. 45 (1998).

constitutional emergency at issue; i.e. 'The legislature neither affirms nor refutes the value of this proposal, and by this legislation simply expresses its intent to provide the voter of the state of Washington an opportunity to express the voter's decision. It is also expressed that many legislators might personally vote against this proposal at the polls, or they might not.' " App. A, *infra*, 41a.

Justice Sanders went on to say

> I would prefer the good sense of schoolchildren who, if asked, "Is an election to consider public funding of a new football stadium 'necessary for the immediate preservation of the public peace, health or safety?' ", undoubtedly would answer "no," to the circumlocutions of the majority.

App. A, *infra*, 43a.

Here, the State Legislature denied Brower his right of referendum regarding the legislation. It did so on a basis that does not pass the test of strict scrutiny. The emergency was no emergency. The false declaration was denial of Brower's rights of core political speech – the right to mount a referendum as to the special election purchased by the team affiliate.

## VI. CONCLUSION

The Petition for Writ of Certiorari should be granted.

Respectfully submitted,

DENNIS W. CLAYTON
*Counsel of Record for Petitioner*

March, 1999.

Brower v. State, No. 65992-3, (Slip Op., December 24, 1998).

Brower v. State, No. 65992-3, (Slip Op., December 24, 1998).

1998

Dec. 1998 BROWER v. STATE
Cause No. 65992-3

[No. 65992-3. En Banc.]
Argued May 27, 1998. Decided December 24, 1998.

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|---|---|---|
| JORDAN BROWER, an individual, Appellant, | ) | No. 65992-3 |
| v. | ) | EN BANC |
| STATE OF WASHINGTON; RALPH MUNRO, as Secretary of State; and FOOTBALL NORTHWEST, a Washington general partnership, Respondents. | ) | Filed December 24, 1998 |

Trial Court: Superior Court, Thurston County, No. 97-2-00964-0, Gary R. Tabor, J., October 1, 1997.

Eugster Haskell, by Stephen K. Eugster; Shawn T. Newman, for appellant.

Attorney Generals Office, by James K. Pharris and Jeffrey T. Even; Foster Pepper & Shefelman, Peter S. DiJulio and Warren J. Rheaume; Grover E. Cleveland, for respondents.

MADSEN, J. – This case concerns Laws of 1997, ch. 220, and Referendum 48, which provide for construction

and financing of new stadium facilities for the Seattle Seahawks, a professional football team. Appellant Jordan Brower raises numerous constitutional challenges to the legislation, primarily in connection with provisions which conditioned referral of Referendum 48 to the people on the payment of costs of the referendum election by a private entity, the "team affiliate." Other challenges are that the Act violates the single subject rule of article II, section 19 of the Washington Constitution, and that it contains an invalid emergency clause. We conclude the legislation is valid and affirm summary judgment in favor of respondents. In reaching this conclusion, we note that our recent decision in *CLEAN v. State*, 130 Wn.2d 782, 928 P.2d 1054 (1996), dictates the result on a number of the issues Brower has raised.

## FACTS

During the 1997 legislative session, the Legislature enacted a bill (the Act) providing for construction and financing of a new football and soccer stadium and exhibition center as a public-private enterprise. Laws of 1997, ch. 220. At the time the legislation was considered, Respondent Football Northwest, Inc., had an option to purchase the Seattle Seahawks football team from its owner who wanted to move the team to California. Football Northwest declared it would not exercise the option to purchase, which was to expire unless exercised by July 1, 1997, unless the legislation was enacted. The Legislature did not pass the bill outright, however. Instead, the Legislature referred sections 101 through 604 of the Act to the people. Among other things, this part of the Act authorizes creation of a public stadium authority by "any

county that has entered into a letter of intent relating to the development of a stadium and exhibition center" with a "team affiliate" or entity with a contractual right to become a "team affiliate." Section 102.020; Section 101(10); RCW 36.102.010(10).[1] The stadium authority can then enter into agreements with a professional football team for development of a new stadium and exhibition center. Sections 105, 106; RCW 36.102.050, .060.

Mr. Brower's constitutional challenges primarily concern sections 605 through 608 of the Act, which were not referred to the people. Section 607 directed the Secretary of State to submit sections 101 through 604 to a vote of the people on or before June 20, 1997. RCW 36.102.803. The Secretary of State designated these sections as Referendum Bill No. 48 pursuant to RCW 29.79.250. Section 607 also directed the Attorney General to prepare an explanatory statement and transmit it to the Secretary of State; directed the Secretary of State to prepare a voters' pamphlet addressing the referendum measure; provided for an accelerated canvass of the results of the election; and provided that the special election would be limited to

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[1] The portions of the Act, Laws of 1997, ch. 220, will be referred to either by the Act's section numbers (which correspond to the section numbers of Referendum 48 for those provisions referred to the people), or to their statutory codification, or both.

A "team affiliate" is "a professional football team that will use the stadium and exhibition center, and any affiliate of the team designated by the team. An 'affiliate of the team' means any person or entity that controls, is controlled by, or is under common control with the team." Section 101(10); RCW 36.102.010 (10).

submission of the Act, i.e., no other ballot measures could be submitted for a vote at the same time. *Id.* Section 605 stated that "[t]he legislature neither affirms nor refutes the value of this proposal," set forth the Legislature's intent that the voters be provided an opportunity to express their decision, and concluded by stating that "[i]t is also expressed that many legislators might personally vote against this proposal at the polls, or they might not." RCW 36.102.801.

Section 606 provided that the Act would be null and void unless the team affiliate entered into an agreement with the Secretary of State to reimburse the state and counties for the cost of a special election to be held on Referendum 48. RCW 36.102.802. A reimbursement agreement for costs of the election was entered into by the Secretary of State and the Seattle Seahawks, Inc., on May 14, 1997. Seattle Seahawks, Inc., immediately assigned all of its interest in and obligations under the agreement to Football Northwest. The expenses have been paid.

Section 608 contained an emergency clause providing that sections 606 and 607 (the provisions for conducting the special election and for reimbursement of the costs of the election) should take effect immediately. Laws of 1997, ch. 220, § 608.

The Act had as its legislative title: "AN ACT Relating to a mechanism for financing stadium and exhibition centers and education technology grants;. . . . " Laws of 1997, ch. 220, at 1060. While provision was originally made in the Act to use any excess funds collected over bonded indebtedness for computer purchases for schools, i.e., education technology grants, HB 2192, § 24(4), this

provision was deleted before passage by the Legislature, although the reference remained in the title. The ballot title of Referendum 48 prepared by the Attorney General and included in the voters' pamphlets and on the ballot stated: "Shall a public stadium authority be authorized to build and operate a football/soccer stadium and exhibition center financed by tax revenues and private contributions?" Clerk's Papers (CP) at 93.

On May 2, 1997, prior to the June 17 date set for the special election, Brower filed a complaint in Thurston County Superior Court against the State seeking an injunction to prevent the election on the basis that the Act contained an invalid emergency clause. In an amended complaint, he also sought declaratory relief, alleging that the Act is unconstitutional on numerous grounds. On May 21, 1997, Football Northwest moved to intervene. All parties stipulated to an order permitting intervention, which was entered May 27, 1997. On June 9, 1997, the superior court entered an order staying all proceedings until after the June 17, 1997 special election. Referendum 48 was passed by a margin of 51.1% with a voter turnout of 51%.

Following the election, the parties filed cross-motions for summary judgment. The trial court granted summary judgment in favor of the State and Football Northwest. This court granted direct review of Brower's appeal. Respondent Football Northwest has moved to strike portions of Brower's brief. The motion has been passed to the merits.

## ANALYSIS

### Authority to Submit Referendum 48 to the People

We are reviewing a grant of summary judgment in favor of respondents. Review of summary judgment is de novo, with the appellate court engaging in the same inquiry as the trial court. *Gunnier v. Yakima Heart Ctr., Inc.*, 134 Wn.2d 854, 858, 953 P.2d 1162 (1998). Summary judgment is proper if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. CR 56(c).

Mr. Brower raises numerous constitutional challenges to the legislation. A statute is presumed to be constitutional and the challenger bears the burden of establishing the unconstitutionality of the legislation beyond a reasonable doubt. *Island County v. State*, 135 Wn.2d 141, 146-47, 955 P.2d 377 (1998); *Leonard v. City of Spokane*, 127 Wn.2d 194, 197, 897 P.2d 358 (1995). The presumption of constitutionality applies to measures approved by the people. *State ex rel. O'Connell v. Meyers*, 51 Wn.2d 454, 458, 319 P.2d 828 (1957); *Washington Fed'n of State Employees v. State*, 127 Wn.2d 544, 558, 901 P.2d 1028 (1995).

The people's power to legislate directly takes two forms, the initiative and the referendum. Const. art. II, § 1. An initiative is a proposed law directly from the people through the filing of signed petitions with the Secretary of State. Const. art. II, § 1(a). An initiative may be an initiative to the people, or to the Legislature. The former is placed directly on the ballot for voter approval or rejection. The latter may be enacted by the Legislature, or the Legislature may decline to act on the measure, in

which case it will be placed on the ballot, or the Legislature may enact an alternative to the initiative, in which case both the initiative and the legislative alternative will be placed on the ballot. *Id.* The referendum is the second power reserved to the people, permitting the voters to approve or reject a measure which has been enacted by the Legislature. Const. art. II, § 1(b). A measure may be referred to the people in two ways. First, voters may refer a measure by submitting petitions signed by the required number of voters to the Secretary of State within 90 days of the end of the session in which the measure was enacted. *Id.* at § 1(b), (c). Second, the Legislature may refer a measure to the people without the voters petitioning for a referendum. *Id.* This case involves a measure referred to the people by the Legislature.

1. Conditioning Act on agreement of private party to reimburse costs of special election.

Mr. Brower maintains that the Legislature does not have general authority to refer a matter to the people, but instead has only that authority expressly set out in art. II, § 1(b). Here, the Legislature provided that the Act would be null and void unless the team affiliate entered into an agreement with the Secretary of State to reimburse the state and the counties for the costs of the special election. This, Brower contends, illegally placed the power of referendum in the hands of a private party, because no referendum would occur unless the team affiliate agreed to reimburse the costs of the special election. Brower further argues that aside from art. II, § 1(b), the Legislature does not have authority to grant a private party the

power to perform a legislative act, particularly where, as here, the private party stands to benefit from the legislation. Respondents maintain that the Legislature did not delegate legislative authority, but instead validly conditioned the effectiveness of the Act on third party conduct, i.e., the contingency that a third party reimburse the state and counties for their election costs.

The legislative authority of the State is vested in the Legislature, art. II, § 1, and it is unconstitutional for the Legislature to abdicate or transfer its legislative function to others, *Keeting v. Public Utils. Dist. No. 1*, 49 Wn.2d 761, 767, 306 P.2d 762 (1957).

> [H]owever, conditioning the operative effect of a statute upon a future event specified by the Legislature does not transfer the state legislative power to render judgment to the persons or entity capable of bringing about that event. The Legislature, itself, determines the statute would be expedient only in certain circumstances. The power to make this judgment is not transferred merely because the circumstances may arise at the discretion of others. The substance of the act is complete in itself and the Legislature is the body which rendered the judgment as to the expediency of conditioning the operation of the statute upon the specified event.

*Diversified Inv. Partnership v. Department of Soc. & Health Servs.*, 113 Wn.2d 19, 28, 775 P.2d 947 (1989); *see State v. Storey*, 51 Wash. 630, 632, 99 P. 878 (1909) ("[t]he mere fact that the act does not take effect until the contingency arises does not indicate a delegation of legislative power, even where the contingency depends upon the action of certain persons").

Here, the Legislature determined that it was necessary to condition the Act on a requirement that the costs of the election be paid by the team affiliate in order to avoid the expenditure of any public funds in connection with a public stadium project unless the voters approved the Act. Because this judgment was made by the Legislature, no unconstitutional delegation of legislative authority occurred.

Moreover, the Legislature may condition the effectiveness of legislation on the acts of a private party who may possibly benefit from the legislation. In *Story* [sic], for example, legislation prohibiting livestock running at large in any county where three-fourths of the lands were fenced required county commissioners to determine whether three-fourths of the county was fenced when ten or more freeholders applied for enforcement of the act. *Storey*, 51 Wash. 630. The effectiveness of the act was thus conditioned on the acts of the freeholders, private persons, who had to apply for enforcement of the legislation, as well as upon private parties having fenced lands within the county. No unconstitutional delegation of legislative powers was found. As in *Diversified Inv.*, the decision of what event made the legislation effective was made by the Legislature, not the third party. Moreover, by applying for enforcement of the act in *Storey*, the freeholders obviously sought to benefit from the provisions of the legislation.[2]

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[2] Brower also maintains, however, that a distinction must be drawn between contingent events which are "public happenings" and those which are "private happenings." Our cases do not draw the distinction urged by *Brower*. Indeed,

Brower contends, though, that while the Legislature may enact measures whose effectiveness is contingent upon a future event, it has no authority to condition the referral of a measure in such a manner.

The state constitution is not a grant but rather is a restriction on the law-making power. *Clark v. Dwyer*, 56 Wn.2d 425, 431, 353 P.2d 941 (1960). "[T]he power of the legislature to enact all reasonable laws is unrestrained except where, either expressly or by fair inference, it is prohibited by the state and federal constitutions." *Id.* The power to enact contingent legislation has clearly been recognized. The question is whether any limitation on this power exists because the legislation is referred to the people.

Article II, section 1(b) of the Washington Constitution provides:

> The second power reserved by the people is the referendum, and it may be ordered on any act, bill, law, or any part thereof passed by the legislature, except such laws as may be necessary for the immediate preservation of the public peace, health or safety, [or][3] support of the state government and its existing public institutions,

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*Storey* is to the contrary. Moreover, insofar as *Brower's* argument is that the contingency must relate to public purposes, the argument fails to account for *CLEAN v. State*, 130 Wn.2d 782, 928 P.2d 1054 (1996), where the court held that construction of a major league baseball stadium in King County serves a public purpose.

[3] "Or" was omitted inadvertently, but is read into the provision. *See CLEAN*, 130 Wn.2d at 804 n.7.

> either by petition signed by the required percentage of the legal voters, or by the legislature as other bills are enacted. . . .

(Emphasis added.) The Legislature is granted the discretionary authority to refer an enactment to the people for approval or rejection. Art. II, § 1(b) also states that referral shall be "as other bills are enacted," indicating that just as the Legislature can condition the effectiveness of other bills on third party conduct, it can condition the effectiveness of a provision referring an act to the people. The Legislature has authority both to refer a measure to the people and to condition the effectiveness of an enactment upon the happening of a future event, and nothing in art. II, § 1 restrains the Legislature from exercising the two powers in connection with one piece of legislation. Accordingly, section 606 does not unconstitutionally delegate legislative authority to the team affiliate.

2. Authority to refer only part of an act.

Brower contends that the Legislature cannot refer only part of an act to the people. Here, sections 101 through 604 of the Act were referred to the people, but the sections concerning the Legislature's position on the measure, reimbursement of costs of the special election, conducting the election, and the emergency clause were not referred. Brower contends that while the people can order a referendum "on any act, bill, law, or any part thereof passed by the legislature," the Legislature can order a referendum only "as other bills are enacted[,]" i.e., only if the act is a complete act. Const. art. II, § 1(a), (b).

This argument is based on a misreading of art. II, § 1(b). The provision states in relevant part that a referendum "may be ordered on any act, bill, law, or any part thereof passed by the legislature . . . either by petition . . . of the legal voters, or by the legislature as other bills are enacted . . . " Const. art. II, § 1(b) (emphasis added). The language plainly means that a referendum may be ordered on a part of any act, bill, or law by either of two methods – petition of the people, or by the Legislature in the same way that it enacts other bills. *See State ex rel. Lofgren v. Kramer*, 69 Wn.2d 219, 221-22, 417 P.2d 837 (1966) (treating words "as other bills are enacted" as relating to the process by which bills are enacted). Under art. II, § 1(b) the Legislature can constitutionally order a referendum on only part of an act.[4]

3. Whether legislation can be referred to the people where the Legislature takes no position on the value of the legislation.

Mr. Brower also argues, as part of his claim that only a complete act can be referred to the people, that the Legislature cannot refer a measure on which it has refused to take a position. He maintains that Referendum 48 is unconstitutional because it is in fact an unlawful initiative to the people rather than a referendum. Because the constitution is a restraint on legislative power, Mr. Brower's argument will prevail only if something in or

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[4] Insofar as Brower's argument relates to the sections of the Act providing for the special election, it would be a strange reading of the constitution if we held that the Legislature must refer its decision to provide for referral.

fairly inferable from the state constitution prohibits the Legislature from referring an act while taking no position on its value. *See Clark*, 56 Wn.2d at 431.

Ordinarily, when a bill is passed by the Legislature the Legislature affirmatively adopts the provisions of the bill. The Act is clearly an unusual piece of legislation because the Legislature deliberately took no position on the value of the legislation before referring it to the people. Section 605. Nevertheless, examination of the state constitution leads to the conclusion that, although unusual, Referendum 48 is a valid referendum.

The legislative rights of the people reserved in state constitutions are to be liberally construed in order to preserve them and render them effective. *State v. Superior Court for Thurston County*, 97 Wash. 569, 577, 166 P. 1126 (1917). In accord with this view, this court has rejected technical construction of statutes implementing art. II, § 1, as well as the constitutional provision itself, except insofar as "necessary to fairly guard against fraud and mistake in the exercise by the people of this constitutional right." *Id.* at 578 (quotation marks and citation omitted). For example, in an early case, the court applied a liberal construction of the provision by reading art. II, § 1(b) as allowing for a referendum by the Legislature of a joint resolution of the Legislature ratifying the federal constitutional amendment for national prohibition. *State v. Howell*, 107 Wash. 167, 181 P. 920 (1919). The court rejected the notion that the matter could not be referred because it was not "an act, bill, or law" within the meaning of art. II, § 1(b).

Thus, we apply a liberal construction to preserve the right of referendum.

When the Legislature refers a measure to the people, it leaves the decision whether the measure will become law in the hands of the people. Further, while an initiative must have the signatures of the required percentage of legal voters, as does a referendum ordered by the people via petition, in the case of a referral by the Legislature the Legislature votes to refer a matter which it determines should be decided by the people. Whether the Legislature has affirmed the value of the measure or not, that vote assures that the Legislature has made a representative determination that the people should decide whether the measure becomes law. These considerations lead us to reject Brower's narrow construction as impeding the right of referendum. Whether the Legislature takes a stand on the merits of the legislation or not, the Legislature must vote to send the matter to the people and the people then make the final decision as to whether the matter becomes law.

We do not find anything in or fairly inferable from the state constitution which indicates that the Legislature's power is restrained in this regard.

Because we find the Legislature had authority to refer Referendum 48, it follows that we reject Brower's contention that the measure is actually an initiative to the people which is unlawful because it lacks sufficient signatures on a petition. Legislation may be referred to the people without petition signatures when the Legislature votes to refer.

## Veto Power

Brower maintains that the Act unconstitutionally granted a veto power to Football Northwest in violation of art. III, § 12 of the Washington State Constitution which vests the right to veto legislation in the hands of the Governor. Brower apparently reasons that because the team affiliate could decline to agree to reimburse the costs of the special election, it had the power to veto the Act.

Brower cites no authority for the proposition that a third party's failure to act to bring about an event upon which the effectiveness of legislation is contingent would constitute a veto within the meaning of the constitution. Moreover, in this case, the Legislature itself made the determination that the Act would be null and void unless a reimbursement agreement was entered. Section 606 did not allow a possibility of a second entity overriding the Legislature's intent. There is no merit to the argument that the veto power has been unlawfully transferred to a private party.

## Special Legislation

Mr. Bower [sic] maintains that the referendum on sections 101 through 604 of the Act constitutes special legislation in violation of art. II, § 28 of the Washington State Constitution. He maintains that the Act provides that a single entity, the team affiliate, benefits from the legislation by agreeing to reimburse the costs of the special election. This challenge appears to relate to the entire Act.

Initially, Respondent Football Northwest urges the court to decline to consider this issue on the ground that Brower did not assert a special legislation claim in his complaint. An issue which was not raised in summary judgment proceedings ordinarily will not be considered on appeal. 4 Lewis H. Orland & Karl B. Tegland, Washington Practice: Rules Practice 560 (1992); *see, e.g., Lewis v. Bell*, 45 Wn. App. 192, 196-97, 724 P.2d 425 (1986). However, the record shows the issue was before the trial court, and we will address it.

Const. art. II, § 28(6) provides in relevant part that "[t]he legislature is prohibited from enacting any private or special laws in the following cases . . . For granting corporate powers or privileges." Special legislation is legislation which operates upon a single person or entity while general legislation operates upon all things or people within a class. *CLEAN*, 130 Wn.2d at 802; *Convention Ctr. Coalition v. City of Seattle*, 107 Wn.2d 370, 380, 730 P.2d 636 (1986). A class may consist of one person or corporation provided the law applies to all members of the class. *CLEAN*, 130 Wn.2d at 802; Convention Ctr., 107 Wn.2d at 380. However, it is not what the law includes, but rather what it excludes, which is the test of special legislation. *Island County v. State*, 135 Wn.2d 141, 150, 955 P.2d 377 (1998). " 'Thus, to survive a challenge as special legislation, any exclusions from a statute's applicability, as well as the statute itself, must be rationally related to the purpose of the statute.' " *Id.* (quoting *City of Seattle v. State*, 103 Wn.2d 663, 674-75, 694 P.2d 641 (1985)).

Mr. Brower argues the legislation applies to a single entity. He emphasizes language in the act defining "team

affiliate" as "a" professional football team and any affiliate of "the" team designated by the team, and stating that an " 'affiliate of the team' means any person or entity that controls, is controlled by, or is under common control with the team." Section 101(10); RCW 36.102.010(10) (emphasis added). He also points out that the Act provides that if the voters reject sections 101 through 604, the Legislature will not pass any similar measure "for the team affiliate," section 604; RCW 36.102.800, and cites other references to "the team affiliate" in section 106, RCW 36.102.060 and Section 606, RCW 36.102.802.

The Act is not special legislation. The Act allows for "any county" to create a public stadium authority if the county has entered into a letter of intent relating to the development of a stadium and exhibition center with a team affiliate or entity with a contractual right to become a team affiliate. Section 102; RCW 36.102.020. The stadium authority can then enter into agreements with a professional football team for development of a new stadium and exhibition center. Sections 105, 106; RCW 36.102.050, .060. The definition of a "team affiliate" is "a professional football team that will use the stadium and exhibition center, and any affiliate of the team designated by the team. An 'affiliate of the team' means any person or entity that controls, is controlled by, or is under common control with the team." Section 101(10); RCW 36.102.010(10). A "professional football team" is "a team that is a member of the national football league or similar professional football association." Section 101(5); RCW 36.102.010(5).

The legislation applies to a class – any county is authorized to form a public stadium authority provided it

satisfies the letter of intent requirement. *See CLEAN*, 130 Wn.2d at 802 (holding that legislation concerning construction and financing of a baseball stadium which applies only to counties of a certain size was not special legislation, even where only one county had a population of that size – possibility existed that another county could reach the given population in the future). Moreover, the term "team affiliate" also refers to a class, because it includes any national football league team or a team of a similar association, and affiliates designated by such a team. Finally, the exclusions from the Act's provisions are rational. Counties which have not entered a letter of intent would not be in a position to have a professional football team playing its home games at a stadium in the county.

Lending of Credit

Mr. Brower contends that the state advanced funds and services to conduct the special election on Referendum 48, and this constituted lending of credit to a private party, the team affiliate, which was obliged to reimburse these costs. His premise is that the election was an election solely to benefit a private party, and the election costs were the costs of the private party.

Article VIII, section 5 of the Washington State Constitution provides that "[t]he credit of the state shall not, in any manner be given or loaned to, or in aid of, any individual, association, company or corporation." The purpose of this provision is to " 'prevent state funds from being used to benefit private interests where the public interest is not primarily served.' " *CLEAN*, 130 Wn.2d at

797 (quoting *Japan Line, Ltd. v. McCaffree*, 88 Wn.2d 93, 98, 558 P.2d 211 (1977)). The first step in deciding whether a gift or loan of public funds has been made is to determine if the funds have been expended to carry out a fundamental purpose of government. *CLEAN*, 130 Wn.2d at 797. If so, no gift or loan of public credit has occurred.

As Respondents contend, there can be no doubt that a special election on a referendum measure is a governmental purpose. If there was any "lending" of credit, it was for a governmental purpose. However, it is difficult to agree that any lending of credit occurred, because the government generally bears the costs of special elections on referenda. RCW 29.13.045, .047. Here, a private entity agreed to reimburse the state and local governments for their costs. For these reasons, we hold that no lending of state credit occurred.

Equal Protection; Ballot Access on Basis of Wealth

Brower argues that the Act violates equal protection principles of the state and federal constitutions because it allows ballot access to be based upon wealth. Mr. Brower does not argue that a different analysis applies under the state privileges and immunities clause than applies under the Equal Protection Clause.

There is no question that this case is unusual because a private entity funded a vote on a matter from which, if the voters approved, the private entity stood to benefit. Troubling questions may arise, such as whether any wealthy entity could persuade the Legislature to place a measure on the ballot provided the costs of the election

were paid, and whether by declining to take a position on the measure and requiring that election costs be reimbursed the Legislature abdicated its role as a representative body. Those, however, are different considerations than whether the Act provides unconstitutional ballot access based upon wealth.

Brower relies upon cases concerning poll taxes and fees required of candidates in order to appear on the ballot. In *Harper v. Virginia State Bd. of Elections*, 383 U.S. 663, 86 S. Ct. 1079, 16 L. Ed. 2d 169 (1966), the Court invalidated a poll tax on equal protection grounds. Here, however, no person was denied the right to vote based upon ability to pay. In *Bullock v. Carter*, 405 U.S. 134, 92 S. Ct. 849, 31 L. Ed. 2d 92 (1972), the Court invalidated Texas law providing that candidates had to pay fees in order to appear on the ballot. In *Lubin v. Panish*, 415 U.S. 709, 94 S. Ct. 1315, 39 L. Ed. 2d 702 (1974), the Court invalidated a California statute requiring a ballot access fee based upon the salary for the office sought. Both *Bullock* and *Lubin* involve a candidate's right to participate in an election, not a ballot measure as in this case. Brower cites no authority which directly supports his claim that the Act unconstitutionally allows ballot access to be based on wealth in violation of equal protection.

The State reasons that the referendum and initiative rights in art. II, § 1 are available without regard to wealth, and therefore there is no classification depriving the voters of direct legislation rights because they lack the ability to pay election costs. Voters can propose an initiative to the people or to the Legislature, and may petition for a vote on legislation enacted by the Legislature. Respondents note that in addition to the people's right to

petition to place a measure on ballot, the Legislature also has the constitutional right to place a referendum measure on the ballot. The Legislature could have enacted legislation providing for a public stadium and exhibition center without ordering a referendum (as it did for a baseball stadium in King County). The Legislature also could have ordered a referendum without requiring a reimbursement agreement. Accordingly, placement of a measure on the ballot does not depend upon wealth. Respondent's arguments are sound.

Finally, we note that even if there were a legitimate reason for concluding that access to the ballot had been granted on the basis of wealth, no equal protection violation would be found because even if the team affiliate gained ballot access based upon wealth, the people have an alternative means to place a measure on the ballot through the petition process. *See Lubin*, 415 U.S. at 718 (candidate's access to ballot based upon wealth not violative of equal protection where the state provides a reasonable alternative means for ballot access).

We do not agree that the Legislature has unconstitutionally provided ballot access on the basis of wealth.

## Right to Political Speech

Mr. Brower argues that his First Amendment political speech and equal protection rights were violated because the Legislature scheduled the special election on Referendum 48 to take place less than 60 days after the Act was enacted by the Legislature. He claims, without support, that one of the purposes of the Act was to make it possible for moneyed interests to "drown out the voices

of the less affluent." Br. of Appellant at 26-27. He points out that the proponent of the measure spent millions of dollars in campaigning on its behalf. He evidently believes that he should have been permitted more time to raise funds. Although not stated, his argument might also suggest that expenditures on behalf of Referendum 48 should have been limited.

Initially, the validity of the emergency clause which permitted the election to occur less than 90 days after the 1997 legislative session is discussed below. The issue here is whether the short timetable unconstitutionally deprived Brower of an opportunity to raise funds to oppose the referendum in violation of the First Amendment, or whether the disparity in funding otherwise violated his political speech rights or equal protection.

The influence of money in politics has been the subject of much attention. Many commentators have noted the power of private wealth to shape the nature and outcome of elections. *E.g.*, Jamin Raskin & John Bonifaz, *Equal Protection and the Wealth Primary*, 11 Yale L. & Pol'y Rev. 273 (1993). The concerns about the influence of wealth in politics has been noted in connection with ballot propositions as well as in connection with candidates for public office. *E.g.*, Richard Briffault, *Ballot Propositions and Campaign Finance Reform*, 1996 Ann. Surv. Am. L. 413 (1996). Despite the commentary, and the controversy, it is clear that rather than mandating equality in spending on a ballot measure, the First Amendment prohibits a state from limiting contributions for and against ballot measures.

In *Buckley v. Valeo*, 424 U.S. 1, 48-49, 96 S. Ct. 612, 46 L. Ed. 2d 659 (1976), the United States Supreme Court said that "the concept that government may restrict the speech of some elements of our society in order to enhance the relative voice of others is wholly foreign to the First Amendment." Governmental regulation of campaign money must be subjected to the exacting scrutiny applicable to core First Amendment rights of political speech. *Id.* at 44. In effect, money is central to effective communication of information concerning candidates and issues. Where a political candidate's campaign is concerned, the prevention of corruption and the appearance of corruption are sufficient governmental interests justifying limitations on individual and political action committee contributions to a campaign. However, the Court found no such corrupting influence attributable to overall campaign expenditures or from personal or family resources, and no other governmental interest sufficient to justify restrictions on overall campaign expenditures or expenditures by a candidate from personal or family resources. *Id.* 51-58. Thus, the total amount spent on a campaign, and the amount from personal and family sources, could not be limited by the state.

In the area of ballot measures, as opposed to candidates for office, the danger of corrupting officeholders through campaign contributions is generally absent. "[D]onations to initiative campaigns, or direct expenditures in connection with ballot propositions, rarely pose a danger of corrupting elected officials since there is no one to corrupt in such elections." Richard Briffault, 1996 Ann. Surv. Am. L. at 422. The Court has held that the First Amendment prohibits the states from limiting the dollar

amounts of contributions for and against ballot measures in order to "equalize" the information presented on both sides. *Citizens Against Rent Control/Coalition for Fair Housing v. City of Berkeley*, 454 U.S. 290, 297-98, 102 S. Ct. 434, 70 L. Ed. 2d 492 (1981). The Court reasoned that a ballot measure is about ideas, and does not afford the opportunity for an expectation of a quid pro quo, unlike the situation where a candidate runs for office. *Id.*; *see also First National Bank v. Bellotti*, 435 U.S. 765, 98 S. Ct. 1407, 55 L. Ed. 2d 707 (1978) (invalidating a state law barring corporations from campaign expenditures on ballot measures).

Thus, no one has a right to equal funding to advocate or oppose a ballot measure. Further, Brower fails to show a governmental interest which would be sufficient to justify the Legislature in considering his ability to raise funds when providing for the election, or to justify the Legislature in restricting expenditures of advocates of Referendum 48. No First Amendment or equal protection violation has occurred as a result of the Legislature's failure to do so. Brower's rights to political speech and equal protection were not violated by the scheduling of the special election.

One Person; One Vote

Mr. Brower argues that the equal protection principle of one person-one vote was violated because the team affiliate could decide whether to agree to reimburse the state and local governments for the costs of the special election, and this constituted a "vote."

The Equal Protection Clause requires that equal participation in the election process be accorded all citizens. *Reynolds v. Sims*, 377 U.S. 533, 565-66, 84 S. Ct. 1362, 12 L. Ed. 2d 506 (1964). Thus, in establishing voting districts within a state, the districts must have " 'substantial equality of population' " in order to insure that "the vote of any citizen is approximately equal in weight to that of any other citizen in the State.' " *Story v. Anderson*, 93 Wn.2d 546, 549-50, 611 P.2d 764 (1980) (quoting *Reynolds*, 377 U.S. at 579). In addition, district lines must not be drawn in a way which invidiously dilutes the voting strength of a particular racial or political group. *Story*, 93 Wn.2d at 549 (citing *White v. Regester*, 412 U.S. 755, 765-70, 93 S. Ct. 2332, 37 L. Ed. 2d 314 (1973)).[5]

The difficulty with Brower's argument is that a statewide vote occurred on Referendum 48 without any "districts" involved. Moreover, the team affiliate as an entity had no vote in the special election. Mr. Brower's vote was not outweighed by any other vote.

No violation of the one person-one vote principle occurred.

Right to a Free and Equal Vote

Mr. Brower contends that the ability of the team affiliate to decide whether to reimburse the costs of the

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[5] More recent United States Supreme Court cases add to the analysis where racial gerrymandering is alleged. *See Miller v. Johnson*, 515 U.S. 900, 115 S. Ct. 2475, 132 L. Ed. 2d 762 (1995) (clarifying *Shaw v. Reno*, 509 U.S. 630, 113 S. Ct. 2816, 125 L. Ed. 2d 511 (1993)).

special election constitutes a vote which carries more weight than his and those of other voters in the state, and thus violates his right to a free and equal vote under art. I, § 19 of the Washington State Constitution.

Article I, section 19 provides that "[a]ll Elections shall be free and equal, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage." The right to vote is fundamental, and art. I, § 19 provides greater protection for a free and equal vote than does the federal constitution's one person-one vote equal protection right. *Foster v. Sunnyside Valley Irrig. Dist.*, 102 Wn.2d 395, 687 P.2d 841 (1984). Article I, section 19 requires "that otherwise qualified voters who are significantly affected by the results of an election be given an opportunity to vote in that election." *City of Seattle v. State*, 103 Wn.2d 663, 673, 694 P.2d 641 (1985).

Article I, section 19 is not implicated in this case. The only election involved is the election on Referendum 48. Mr. Brower's right to vote in that election was not impeded in any way. Moreover, the team affiliate did not have a vote at all. The reimbursement provision did not grant a voting right, but conditioned the effectiveness of the legislation.

There was no violation of Mr. Brower's right to a free and equal vote.

Fundamental Principles; Public Policy

Mr. Brower contends the Act is unconstitutional because it violates fundamental principles in violation of

art. I, §§ 1 and 32 of the Washington State Constitution and is against public policy in light of other constitutional violations he claims result from the Act.

Article I, section 32 provides that "[a] frequent recurrence to fundamental principles is essential to the security of individual right and the perpetuity of free government." This provision has primarily been viewed as an interpretative mechanism in connection with individual rights, and has also been used to define principles of state and local government. *Seeley v. State*, 132 Wn.2d 776, 809-12, 940 P.2d 604 (1997). The court has reasoned that the provision emphasizes the importance of individual rights provided in Const. art I, §§ 1-31. *Doe v. Puget Sound Blood Ctr.*, 117 Wn.2d 772, 780-81, 819 P.2d 370 (1991). Article I, section 32 has not been interpreted as providing substantive rights in and of itself. The Act does not otherwise violate the constitution, and we will not apply art. I, § 32 to overturn the measure. Mr. Brower's claims of violation of public policy are duplicative of his claims that numerous constitutional provisions have been violated.

We hold that the Act does not violate fundamental principles or public policy.

Article II, section 19; Multiple Subjects Prohibition

Mr. Brower maintains that the Act is unconstitutional because it violates the single subject rule of art. II, § 19 of the Washington State Constitution.

Article II, section 19 provides: "No bill shall embrace more than one subject, and that subject shall be expressed

in the title." The policies underlying the constitutional provision are the prevention of " 'logrolling,' or pushing legislation through by attaching it to other necessary or desirable legislation," and general notice to members of the legislature and the public of what is contained in the proposed legislation. *State v. Thorne*, 129 Wn.2d 736, 757, 921 P.2d 514 (1996); *see Washington Fed'n of State Employees v. State*, 127 Wn.2d 544, 552, 901 P.2d 1028 (1995).

1. Title of Act.

Brower first claims that the Act's title violates art. II, § 19. The initial question is whether the legislative title or the ballot title is the relevant title. In *Washington Fed'n* the court held that the ballot title is the relevant title where an initiative is voted on by the people, noting among other things that it is the ballot title with which the voters are faced when voting. *Washington Fed'n*, 127 Wn.2d at 555 . (The court also noted that not all initiatives have legislative titles.) In *State v. Broadaway*, 133 Wn.2d 118, 942 P.2d 363 (1997), the court held that where an initiative to the Legislature was enacted by the Legislature, the legislative title, which is the title before the legislators when voting on the measure, is the relevant title.

In this case, sections 605 through 608 of the Act were enacted by the Legislature, while sections 101 through 604 comprised Referendum 48 which the voters approved in the special election. Because the people made the final decision as to whether Referendum 48 would be the law, the ballot title is the relevant title to assess that part of the legislation for compliance with art. II, § 19 in light of *Washington Fed'n*. However, the people did not vote on

sections 605 through 608. Consistent with *Washington Fed'n* and *Broadaway*, the legislative title is the relevant title for these sections of the Act; the ballot title was not before the Legislature.[6]

The ballot title of Referendum 48 provided: "Shall a public stadium authority be authorized to build and operate a football/soccer stadium and exhibition center financed by tax revenues and private contributions?" CP at 93. Mr. Brower does not claim that this title violates art. II, § 19.

As to the Legislature's enactment of sections 605 through 608, the Legislative title states: "AN ACT Relating to a mechanism for financing stadium and exhibition centers and education technology grants;. . . . " Laws of 1997, ch. 220, at 1060. Brower maintains that the subject "education technology grants" is a second subject which is not included in the Act. As noted, a provision concerning education technology grants appeared in HB 2192, § 24(4), but was deleted before passage by the Legislature.

Where the Legislature removes a provision from a bill by amendment, but a reference to that provision continues to appear in the title, no violation of art. II, § 19 occurs. *State v. Carroll*, 81 Wn.2d 95, 102, 500 P.2d 115

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[6] In this regard, we note that sections 605 through 608 do not merely provide for a special election on a referendum measure. The sections also contain the provisions conditioning the effectiveness of the legislation on the acts of the team affiliate. Accordingly, we are not required to address the question whether provisions only providing for referral of a measure are subject to art. II, § 19.

(1972). In *Carroll*, the title stated that a statute had been amended, but the amending section of the bill was removed before passage. The title continued to refer to amending the statute. The court said that "the portions of the title which were inadvertently left in after the bill itself was amended are surplusage" and the title did not violate art. II, § 19. *Id.* at 102.

We add that the enrolled bill doctrine forbids an inquiry into whether the Legislature might have been misled by a continued reference in the title to material deleted from an act. *State ex rel. Washington Toll Bridge Auth. v. Yelle*, 61 Wn.2d 28, 33, 377 P.2d 466 (1962). While Brower claims that the court found no second subject in the title in *Yelle*, the court in *Carroll* refused to even consider whether the reference in the title to an amendment would have been a reference to a second subject where the amending provision had been deleted from the body of the act.

Under *Carroll*, the legislative title does not violate art. II, § 19.

2. Second subject in Act

Mr. Brower also argues that the Act contains a second subject, a "private" election, which is not expressed in the title. Again, his starting point is the legislative title. (Since Referendum 48 did not contain the election provisions, it would not, in any case, be subject to this challenge.)

This claim is unpersuasive. First, the Legislature is constitutionally entitled to refer a measure to the people. Const. art. II, § 1(b). We will not read into the state

constitution a requirement that any time the Legislature refers a matter it must enact a separate piece of legislation to provide for the election, which is what Brower's argument, if accepted, would require. Further, the legislation enacted by the Legislature included the provisions referring the measure to the people and the election procedures involved. The legislative title, in addition to that part quoted above, listed statutes which would be amended or newly created, and added: "providing a contingent expiration date; providing for the submission of certain sections of this act to a vote of the people; and declaring an emergency." Laws of 1997, ch. 220, at 1060 (emphasis added). The election provisions were clearly encompassed within the title.

In summary, we hold that the ballot title is the relevant title insofar as Referendum 48 is concerned, and that the legislative title is the relevant title insofar as the Legislature enacted part of the Act which was not referred to the people. We find no violation of art. II, § 19.

## Emergency Clause

Mr. Brower contends that section 608, the emergency clause relating to the reimbursement and election provisions, is invalid. He asserts that the purpose of the clause is to permit an election at a time dictated by the team affiliate. He argues that the clause is an obviously false and palpable attempt at dissimulation because the Legislature itself was neutral on the value of the Act and so no emergency existed. If an emergency had existed, Brower urges, the state would have paid the costs of the election.

Article II, section 1(b) provides in part that the power of referendum reserved by the people may be ordered on any legislation "except such laws as may be necessary for the immediate preservation of the public peace, health or safety. . . . " An emergency clause is tested against this standard. *CLEAN*, 130 Wn.2d at 803-12.

Mr. Brower's argument is not persuasive in light of *CLEAN*. The court there held that construction of a major public sports stadium is a proper exercise of the State's police power. *Id.* at 805-06. The court also held in that case that the stadium act concerning new baseball stadium facilities for the Seattle Mariners was necessary for the immediate preservation of the public peace, health or safety. The court noted that an emergency clause is given effect " 'unless the declaration on its face is obviously false; and, in determining the truth or falsity of the legislative declaration, [the court] will enter upon no inquiry as to the facts' " and will give the declaration every favorable presumption. *Id.* at 807 (quoting *State ex rel. Humiston v. Meyers*, 61 Wn.2d 772, 778, 380 P.2d 735 (1963)). "Legislative declarations of fact, such as the existence of an emergency, are deemed conclusive unless they are 'obviously false and a palpable attempt at dissimulation.' " *Id.* at 808 (citations omitted). The court determined from the record in that case that a real emergency existed because the public purpose sought to be achieved by passage of the stadium act would be unattainable if the Mariners franchise was sold to investors before the Legislature could assure the owners that a new facility would be built in King County. *Id.* at 809-11.

In this case, submission of Referendum 48 clearly constitutes a public purpose because the state constitution expressly provides for the Legislature to refer enactments to the people at a special election. Const. art. II, § 1(b), (d). The referendum itself concerns public sports stadium, also a public purpose. *CLEAN*, 130 Wn.2d at 805-06. The referral and election provisions were also necessary for the immediate preservation of the public peace, health, or safety. *See id.* at 804, 808-09. The record shows that if these provisions had not been declared an emergency, they would not have taken effect until 90 days after the end of the legislation, after Football Northwest's option to purchase the Seahawks expired. The then current owner of the Seahawks wanted to move the team from Washington. Football Northwest would help finance the cost of new facilities, but declared it would do so only if voters approved Referendum 48. In order for the legislation to achieve its purpose, the election had to be held before the option expired. The purpose of the legislation, construction of a public sports stadium and exhibition center provided the people approved of it, would not have been achievable unless sections 605 through 608 were effective before Football Northwest's option expired. In other words, it was the need for an expeditious vote, not the need to construct a stadium, which constituted the emergency.[7]

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[7] Notably, the emergency clause in section 608 did not apply to the provisions of the Act concerning construction of a public sports stadium and exhibition center, sections 101 through 604, but instead applied to only the special election and reimbursement provisions, sections 606 and 607.

Further, the Legislature directed accelerated canvassing of the election results, thus indicating its decision that a prompt determination of election results was needed. Similar to the situation in *CLEAN*, the record demonstrates that the purpose of the stadium act in this case would be unattainable without the Legislature's declaration of an emergency and accordingly the declaration was not obviously false.

The dissent's analysis unfortunately paints an incomplete picture. The dissent offers two scenarios, neither of which reflects the actual circumstances. The dissent believes that either "emergency" relates solely to the election process in and of itself, or "emergency" relates to legislation on which the Legislature took no position. But at issue is not merely an election nor merely legislation on which the Legislature took no position. The Legislature by majority vote determined that the people of this state should decide whether to commit public funds to a public sports stadium, and if the voters approved, the stadium would be constructed. That purpose would be utterly thwarted if the election provisions did not take effect before Football Northwest's option expired. The people's right to vote on a legislatively referred matter would have been rendered completely meaningless without the emergency clause.

Moreover, we are not faced with a new issue or one of first impression in this case. Following the dissent's approach would require that we overrule recently decided precedent. *See CLEAN v. State*, 130 Wn.2d 782, 928 P.2d 1054 (1996). Overruling a prior decision should not be undertaken lightly. *Keene v. Edie*, 131 Wn.2d 822, 831, 935 P.2d 588 (1997). This is especially true where the

precedential case is recent and the varying views on the issue thoroughly explored in the case.

Next, Mr. Brower contends that his right of referendum will be violated if the court does not declare the emergency clause invalid. However, with regard to sections 101 through 604 of the Act, the right of referendum does not provide a basis to delay an election on a matter already referred to the people. In *Langdon v. City of Walla Walla*, 112 Wash. 446, 468, 193 P. 1 (1920), the court rejected a challenge that an emergency clause denied the right to referendum where the measure already provided for a referendum. As Respondents put it, Mr. Brower does not have a right to a referendum on a referendum. With regard to sections 605 through 608 of the Act, our conclusion that the emergency clause is valid precludes any argument that Brower's right to referendum has been denied.

Mr. Brower also urges that his right to free political speech will be violated if the court simply applies the standard for validity of emergency clauses which it utilized in *CLEAN*. He maintains that where political speech is concerned, an emergency clause must satisfy the "exacting scrutiny" standard applicable when a law burdens core political speech. *See, e.g., First Nat'l Bank v. Bellotti*, 435 U.S. 765, 786, 98 S. Ct. 1407, 55 L. Ed. 2d 707 (1978).

While political speech is involved where a campaign on a ballot measure is involved, Mr. Brower's political speech rights have not been unconstitutionally infringed as a result of the election schedule, as discussed above. That election schedule was, of course, made possible by

the declaration of emergency. Given these considerations, we decline to discuss whether the standard for assessing an emergency clause should be different where political speech might be adversely impacted.

The emergency clause in section 608 is valid.

## Severability

Mr. Brower contends that unconstitutional provisions of the Act cannot be severed from the remainder of the Act. Because we do not find any of the provisions unconstitutional, we do not reach this issue.

## Motion to Strike

Football Northwest has moved pursuant to RAP 10.4(d) to strike portions of Mr. Brower's brief on the ground that Brower has made factual assertions unsupported by evidence and legal conclusions unsupported by authority. Football Northwest objects to Brower's claim that Football Northwest had a "veto," that the burden of proof is on Respondents (Football Northwest seriously misrepresents Brower's argument – Brower clearly states that the burden is on him, but suggests in a footnote that it "might be contended" that burden should be on Respondents), that a decision outside an election is a "vote," that the Legislature cannot order a referendum on only a part of an act, that the Legislature did not enact the Act, and that Brower has a right to have a referendum on a referendum. The motion is contained in Football Northwest's brief.

While the court can refuse to consider assertions and argument which fail to comply with RAP 10.4(d), the items complained about have more to do with Brower's characterization of the effect of the Legislation than with unsupported factual assertions or incorrect statements of law.

In any event, a party may include in a brief only a motion which, if granted, would preclude hearing the case on the merits. RAP 17.4(d). Granting Football Northwest's motion would not preclude hearing this case on the merits, and accordingly the motion will not be considered. *Lawson v. State*, 107 Wn.2d 444, 448, 730 P.2d 1308 (1986).

## CONCLUSION

The trial court's grant of summary judgment in favor of Respondents is affirmed. The motion to strike is not properly before the court and will not be considered.

DURHAM, C.J., and GUY, JOHNSON, DOLLIVER, SMITH, and ALEXANDER, JJ., concur.

SANDERS

SANDERS, J. (dissenting) – Our state constitution article II, section 1, guarantees the people's right to referendum, subject only to a specific exception, and article II, section 28(6), absolutely prohibits special laws "for granting corporate powers or privileges," without exception. As it is the duty of this court to uphold the constitution in general, and these provisions in particular, I must dissent from an errant majority. It is not the role of the court to run interference for legislative excess, nor score points for

corporate wealth, but to protect the constitutional rules of the game.

## CONSTITUTIONAL RIGHT TO REFERENDUM

Article II, section 1(b), of the Washington Constitution plainly provides a referendum may be ordered on "any act, bill, law, or any part thereof passed by the legislature, except such laws as may be necessary for the immediate preservation of the public peace, health or safety. . . . " The first question before us, therefore, is whether sections 606 and 607 of the subject legislation fit within the constitutional exception to the general right of referendum. *See* Laws of 1997, ch. 220, §§ 606, 607.

Section 606[1] exclusively vests in the Seahawks the option to pay for, and thus hold, a special election; whereas section 607[2] details the subject of and procedure by which an the election might be held.

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[1] Laws of 1997, ch. 220, § 606, provides:

> Notwithstanding any other provision of this act, this act shall be null and void in its entirety unless the team affiliate as defined in section 101 of this act enters into an agreement with the secretary of state to reimburse the state and the counties for the full cost of the special election to be held on or before June 20, 1997.

[2] Laws of 1997, ch. 220, § 607, provides:

> (1) The secretary of state shall submit sections 101 through 604 of this act to the people for their adoption and ratification, or rejection, at a special election to be held in this state on or before June 20, 1997, in accordance with Article II, section 1 of the state Constitution and the laws adopted to facilitate

The majority opines the requirements of the constitutional exception to the people's right of referendum has

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its operation. The special election shall be limited to submission of this act to the people.

(2) The attorney general shall prepare the explanatory statement required by RCW 29.81.020 and transmit that statement regarding the referendum to the secretary of state no later than the last Monday of April before the special election.

(3) The secretary of state shall prepare and distribute a voters' pamphlet addressing this referendum measure following the procedures and requirements of chapter 29.81 RCW, except that the secretary of state may establish different deadlines for the appointment of committees to draft arguments for and against the referendum, for submitting arguments for and against the referendum, and for submitting rebuttal statements of arguments for and against the referendum. The voters' pamphlet description of the referendum measure shall include information to inform the public that ownership of the KingDome may be transferred to the public stadium authority and that the KingDome will be demolished in order to accommodate the new football stadium.

(4) A county auditor may conduct the voting at this special election in all precincts of the county by mail using the procedures set forth in RCW 29.36.121 through 29.36.139.

(5) Notwithstanding the provisions of RCW 29.62.020, the county canvassing board in each county shall canvass and certify the votes cast at this special election in that county to the secretary of state no later than the seventh day following the election. Notwithstanding the provisions of RCW 29.62.120, the secretary of state shall canvass and certify the

been met based upon (1) the "emergency" clause in the legislation itself,[3] and (2) a statement in the record that Football Northwest's option to purchase the Seahawks would expire shortly after the legislation was passed. Majority at 32. The majority also claims its result is required by our holding in *CLEAN v. State*, 130 Wn.2d 782, 792-93, 928 P.2d 1054 (1996) (*CLEAN-I*). I disagree.

Although profound reservations about the *CLEAN-I* decision were expressed in the dissent to that majority opinion, its dictates were followed in *CLEAN v. City of Spokane*, 133 Wn.2d 455, 947 P.2d 1169 (1997) (*CLEAN-II*), *cert. denied*, 119 S. Ct. 45 (1998), as they must be followed until, or unless, overruled. *See CLEAN-II*, 133 Wn.2d at 478 (Sanders, J., concurring) ("Once the constitutional well has been poisoned, we all must drink from it lest the

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returns from the counties no later than the ninth day following the special election.

(6) The secretary of state shall reimburse each county for the cost of conducting the special election in that county in the same manner as state primary and general election costs are reimbursed under RCW 29.13.047 (1) and (3).

(7) No other state, county, or local election shall be required or held on any proposition related to or affecting the stadium and exhibition center defined in section 101 of this act.

[3] Laws of 1997, ch. 220, § 608, the "emergency clause," of the act provides:

Sections 606 and 607 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately.

incentive to correct our mistakes in a principled fashion be lost by inconsistently imposing them."). But in this case the majority goes beyond the holding of *CLEAN-I* to achieve its result.

The dissent to the majority in *CLEAN-I* opined the court there had abdicated its judicial role by deferring to legislative excess at the expense of the people who have the constitutional right to themselves legislate through initiative and referendum. *See CLEAN-I*, 130 Wn.2d at 821 (Sanders, J., dissenting). However such deference, not of constitutional origin, persuaded the *CLEAN-I* majority to credit the so-called emergency clause affixed to the base-ball stadium tax bill with a status of objective truth neither present in nature nor otherwise apparent from even the face of the legislation. But here we go one step beyond *CLEAN-I* by actually discounting a legislative declaration incompatible with the existence of the alleged constitutional emergency at issue; *i.e.*,

> The legislature neither affirms nor refutes the value of this proposal, and by this legislation simply expresses its intent to provide the voter of the state of Washington an opportunity to express the voter's decision. It is also expressed that many legislators might personally vote against this proposal at the polls, or they might not.

Laws of 1997, ch. 220, § 605. Compare *CLEAN-I*, 130 Wn.2d at 807 ("In reviewing legislative declarations of emergency we are to give substantial deference to the Legislature.").

Moreover the majority focuses upon whether a "real emergency existed" (Majority at 32), although the operative constitutional provision never uses the word "emergency," but rather references the need for "immediate preservation" of the "public peace, health or safety. . . . " Const. art. II, § 1(b). The majority's analysis thereby erroneously collapses the operative constitutional text into simply a requirement for "immediacy" without regard to the particular nature of the problem in substance; *e.g.*, does the problem threaten the "public peace, health or safety" or, rather, the financial expectations of the privileged few?

While the majority finds immediacy in the specifics of the Seahawks' option, it elsewhere defends against the claim of unconstitutional special legislation by asserting that this legislation "applies to a class" of counties and "team affiliate[s]," not just the Seahawks only. Majority at 17. But if such is the case, how can we credit an "emergency" to the class by exclusively relying on the specific facts fortuitously unique to but one of its members?

Beyond that I wonder if, indeed, the legislature acted with courage to avert a pending catastrophe at the last possible moment what was the exact nature of the catastrophe so nearly avoided? In *CLEAN-I* it was the specter that the Mariners might leave town to make more money elsewhere which prompted the crisis which was "solved" through public financing of a new stadium.[4] However here the fate of that indispensable institution for public

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[4] Although less than "an emergency of apocalyptic dimensions," the *CLEAN-I* majority advised. *Id.* at 809.

peace, health, or safety the Seahawks is not similarly secured by this legislative action but rather its future is simply referred to the whims of the electorate, with a declaration that the very legislators enacting this "emergency" measure may not even vote for new stadium taxes in any event.

How the act of simply holding an election without regard to result can qualify under the plain language of the constitutional imperative ("immediate preservation of the public peace, health or safety. . . . ") is something which the majority does not explain and I cannot fathom. If the prospective loss of the Seahawks is an "emergency" which must be promptly "solved" by the legislature, an election would not necessarily approve the new taxes. At most an election is a means, not an end in itself.

I would prefer the good sense of schoolchildren who, if asked, "Is an election to consider public funding of a new football stadium 'necessary for the immediate preservation of the public peace, health or safety?", undoubtedly would answer "no," to the circumlocutions of the majority.

## UNCONSTITUTIONAL SPECIAL LEGISLATION

The second major flaw in the majority opinion is its treatment of the absolute constitutional prohibition against special legislation:

> The legislature is prohibited from enacting any private or special laws in the following cases:
>
> . . . .

6. For granting corporate powers or privileges.

Const. art. II, § 28.

At the outset the majority finds an "emergency" in the need for an "expeditious vote" to precede the impending expiration date of Football Northwest's option to purchase the Seahawks team. Majority at 33. Yet the majority inconsistently justifies the legislation against the claim of special privilege to Football Northwest relying upon the statutory text's use of the generic term "team affiliate." Majority at 16-17. Although in some parallel universe "team affiliate" might reference something other than Football Northwest not on this planet. But let us accept the challenge and test the claim of special privilege in the abstract.

Turning our attention to that provision of the statute which gives the "team affiliate" the exclusive right to pay for (or buy) the election, and thereby determine if we are to have one, one must also consider whether this provision grants a special privilege to a corporation not available to others similarly situated.

As perceived by appellant in his brief, "[Const. art. II, § 28] is directed against legislation which favors one particular person, group or area to the exclusion of others" (citing *Municipality of Metro. Seattle v. City of Seattle*, 57 Wn.2d 446, 357 P.2d 863 (1960)), whereas "[s]ections of this provision tend to protect people of [the] state as a whole from legislative favoritism of individual or group" (citing *State ex rel. Collier v. Yelle*, 9 Wn.2d 317, 115 P.2d 373 (1941)). Br. of Appellant at 27-28.

It may be generally said that a special law is one which relates to particular persons or things while a general law is one which applies to all persons or things of a class. *Spokane & Eastern Trust Co. v. Hart*, 127 Wash. 541, 548, 221 P. 615 (1923) (citing *Young Men's Christian Ass'n v. Parish*, 89 Wash. 495, 154 P. 785 (1916)). However,

> the true principle requires something more than a mere designation by such characteristics as will serve to classify, for the characteristics which thus serve as the basis of classification must be of such a nature as to mark the objects so designated as peculiarly requiring exclusive legislation. . . . The marks of distinction on which the classification is founded must be such, in the nature of things, as will, in some reasonable degree, at least, account for or justify the restriction of the legislation.

*Hart*, 127 Wash. at 549 (quoting *State ex rel. Richards v. Hammer*, 42 N.J.L. 435, 440 (1880), *aff'd*, 44 N.J.L. 667 (1882)). So even if we engage in the fiction that "team affiliate" is not merely a pseudonym for Football Northwest, but rather by pure coincidence a lonely star in an otherwise empty universe, the question still remains whether there is a rational basis to allow the "team affiliate" the exclusive privilege to hold the election by agreeing to pay for it, as this exclusive privilege is certainly unavailable to any other person or private corporation who might want to assure the election is conducted. But if an election, bought and paid for by a "team affliliate [sic]," is a good thing, why not make this a game anyone can play? The issue is exclusion.

In pertinent part this legislation specially delivers the right to conduct this election to uniquely privileged corporate hands:

> Notwithstanding any other provision of this act, this act shall be null and void in its entirety unless the team affiliate as defined in section 101 of this act enters into an agreement with the secretary of state to reimburse the state and the counties for the full cost of the special election to be held on or before June 20, 1997.

Laws of 1997, ch. 220, § 606.

What the majority fails to explain is why it is only the team affiliate which is favored with the unique option to buy this election. If this election is for a "public purpose," as says the majority, then why gamble the public interest by limiting the special power to hold it? Yes, I think by application of the criteria by which we measure special grants of corporate privilege, this is it. Even if we considered the "team affiliate" a "class" of corporations having but one member, it is still a special privilege to that class to the exclusion of those who are not in the class; whereas each excluded citizen has at least an equally rational basis to claim the right to pay for this election as does the privileged "team affiliate." Compare *CLEAN-I*, 130 Wn.2d at 802 ("In order to 'survive a challenge to a special legislation, any exclusions from a statute's applicability, as well as the statute itself, must be rationally related to the purpose of the statute.' " (quoting *City of Seattle v. State*, 103 Wn.2d 663, 675, 694 P.2d 641 (1985)).

## CONCLUSION

As to what remains of our referendum clause, and the constitutional prohibition against special grants of corporate privilege, I see only an outline of ashes on the courtroom floor.

# STADIUM, EXHIBITION CENTERS, AND EDUCATION TECHNOLOGY GRANTS - FINANCING - REFERENDUM BILL NUMBER 48

## CHAPTER 220

## S.H.B. No. 2192

AN ACT Relating to a mechanism for financing stadium and exhibition centers and education technology grants; amending RCW 82.29A.130, 67.70.240, 67.70.042, 39.42.060, 43.79A.040, 36.38.010, 36.32.235, 39.04.010, 39.10.120, 67.28.180, and 82.14.049; reenacting and amending RCW 42.17.310; adding a new section to chapter 82.08 RCW; adding a new section to chapter 82.14 RCW; adding new sections to chapter 67.70 RCW; adding new sections to chapter 43.330 RCW; adding a new section to chapter 36.38 RCW; adding a new section to chapter 39.30 RCW; adding a new chapter to Title 36 RCW; adding a new chapter to Title 43 RCW; creating new sections; providing a contingent expiration date; providing for the submission of certain sections of this act to a vote of the people; and declaring an emergency.

*BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:*

## PART I

## AUTHORITY CREATION AND POWERS

NEW SECTION. **Sec. 101.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

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* Additions are indicated by underline; deletions by ~~strikeout~~.

(1) "Design" includes architectural, engineering, and other related professional services.

(2) "Develop" means, generally, the process of planning, designing, financing, constructing, owning, operating, and leasing a project such as a stadium and exhibition center.

(3) "Permanent seat license" means a transferable license sold to a third party that, subject to certain conditions, restrictions, and limitations, entitles the third party to purchase a season ticket to professional football games of the professional football team played in the stadium and exhibition center for so long as the team plays its games in that facility.

(4) "Preconstruction" includes negotiations, including negotiations with any team affiliate, planning, studies, design, and other activities reasonably necessary before constructing a stadium and exhibition center.

(5) "Professional football team" means a team that is a member of the national football league or similar professional football association.

(6) "Public stadium authority operation" means the formation and ongoing operation of the public stadium authority, including the hiring of employees, agents, attorneys, and other contractors, and the acquisition and operation of office facilities.

(7) "Site acquisition" means the purchase or other acquisition of any interest in real property including fee simple interests and easements, which property interests constitute the site for a stadium and exhibition center.

(8) "Site preparation" includes demolition of existing improvements, environmental remediation, site excavation, shoring, and construction and maintenance of temporary traffic and pedestrian routing.

(9) "Stadium and exhibition center" means an open-air stadium suitable for national football league football and for Olympic and world cup soccer, with adjacent exhibition facilities, together with associated parking facilities and other ancillary facilities.

(10) "Team affiliate" means a professional football team that will use the stadium and exhibition center, and any affiliate of the team designated by the team. An "affiliate of the team" means any person or entity that controls, is controlled by, or is under common control with the team.

NEW SECTION. **Sec. 102.** (1) A public stadium authority maybe created in any county that has entered into a letter of intent relating to the development of a stadium and exhibition center under chapter . . . , Laws of 1997 (this act) with a team affiliate or an entity that has a contractual right to become a team affiliate.

(2) A public stadium authority shall be created upon adoption of a resolution providing for the creation of such an authority by the county legislative authority in which the proposed authority is located.

(3) A public stadium authority shall constitute a body corporate and shall possess all the usual powers of a corporation for public purposes as well as all other

powers that may now or hereafter be specifically conferred by statute, including, but not limited to, the authority to hire employees, staff, and services, to enter into contracts, and to sue and be sued.

(4) The legislative authority of the county in which the public stadium authority is located, or the council of any city located in that county, may transfer property to the public stadium authority created under this chapter. Property encumbered by debt may be transferred by a county legislative authority or a city council to a public stadium authority created to develop a stadium and exhibition center under section 105 of this act, but obligation for payment of the debt may not be transferred.

NEW SECTION. **Sec. 103.** (1) A public stadium authority shall be governed by a board of directors consisting of seven members appointed by the governor. The speaker of the house of representatives, the minority leader of the house of representatives, the majority leader of the senate, and the minority leader of the senate shall each recommend to the governor a person to be appointed to the board.

(2) Members of the board of directors shall serve four-year terms of office, except that three of the initial seven board members shall serve two-year terms of office. The governor shall designate the initial terms of office for the initial members who are appointed.

(3) A vacancy shall be filled in the same manner as the original appointment was made and the person appointed to fill a vacancy shall serve for the remainder of the unexpired term of the office for the position to which he or she was appointed.

(4) A director appointed by the governor may be removed from office by the governor.

NEW SECTION. **Sec. 104.** (1) There is created a public stadium authority advisory committee comprised of five members. The advisory committee consists of: The director of the office of financial management, who shall serve as chair; two members appointed by the house of representatives, one each appointed by the speaker of the house of representatives and the minority leader of the house of representatives; and two members appointed by the senate, one each appointed by the majority leader of the senate and the minority leader of the senate.

(2) The advisory committee, prior to the final approval of any lease with the master tenant or sale of stadium naming rights, shall review and comment on the proposed lease agreement or sale of stadium naming rights.

NEW SECTION. **Sec. 105.** (1) The public stadium authority is authorized to acquire, construct, own, remodel, maintain, equip, reequip, repair, and operate a stadium and exhibition center as defined in section 101 of this act.

(2) The public stadium authority may enter into agreements under chapter 39.34 RCW for the joint provision and operation of a stadium and exhibition center and may enter into contracts under chapter 39.34RCW where any party to the contract provides and operates the stadium and exhibition center for the other party or parties to the contract.

(3) Any employees of the public stadium authority shall be unclassified employees not subject to the provisions of chapter 41.06RCW and a public stadium authority may contract with a public or private entity for the operation or management of the stadium and exhibition center.

(4) The public stadium authority is authorized to use the alternative supplemental public works contracting procedures set forth in chapter 39.10 RCW in connection with the design, construction, reconstruction, remodel, or alteration of a stadium and exhibition center.

(5) The public stadium authority may impose charges and fees for the use of the stadium and exhibition center, and may accept and expend or use gifts, grants, and donations.

(6) The public stadium authority shall comply with the prevailing wage requirements of chapter 39.12 RCW and goals established for women and minority-business participation for the county.

NEW SECTION. **Sec. 106.** In addition to other powers and restrictions on a public stadium authority, the following apply to a public stadium authority created to develop a stadium and exhibition center under section 105 of this act:

(1) The public stadium authority, in consultation with the team affiliate, shall have the authority to determine the stadium and exhibition center site;

(2) The public stadium authority, in consultation with the team affiliate, shall have the authority to establish the overall scope of the stadium and exhibition center

project, including, but not limited to, stadium and exhibition center itself, associated exhibition facilities, associated parking facilities, associated retail and office development that are part of the stadium and exhibition center, and ancillary services and facilities;

(3) The public stadium authority, in consultation with the team affiliate, shall have the authority to make the final determination of the stadium and exhibition center overall design and specification;

(4) The public stadium authority shall have the authority to contract with a team affiliate for the provision of architectural, engineering, environmental, and other professional services related to the stadium and exhibition center site, design options, required environmental studies, and necessary permits for the stadium and exhibition center;

(5) The public stadium authority, in consultation with the team affiliate, shall have the authority to establish the project budget on the stadium and exhibition center project;

(6) The public stadium authority, in consultation with the team affiliate, shall have the authority to make recommendations to the state finance committee regarding the structure of the financing of the stadium and exhibition center project;

(7) The public stadium authority shall have the authority to enter into a development agreement with a team affiliate whereby the team affiliate may control the development of the stadium and exhibition center project, consistent with subsections (1) through (6) of this section,

in consideration of which the team affiliate assumes the risk of costs of development that are in excess of the project budget established under subsection (5) of this section. Under the development agreement, the team affiliate shall determine bidding specifications and requirements, and other aspects of development. Under the development agreement, the team affiliate shall determine procurement procedures and other aspects of development, and shall select and engage an architect or architects and a contractor or contractors for the stadium and exhibition center project, provided that the construction, alterations, repairs, or improvements of the stadium and exhibition center shall be subject to the prevailing wage requirements of chapter 39.12 RCW and all phases of the development shall be subject to the goals established for women and minority-business participation for the county where the stadium and exhibition center is located. The team affiliate shall, to the extent feasible, hire local residents and in particular residents from the areas immediately surrounding the stadium and exhibition center during the construction and ongoing operation of the stadium and exhibition center;

(8) The public stadium authority shall have the authority to enter into a long-term lease agreement with a team affiliate whereby, inconsideration of the payment of fair rent and assumption of operating and maintenance responsibilities, risk, legal liability, and costs associated with the stadium and exhibition center, the team affiliate becomes the sole master tenant of the stadium and exhibition center. The master tenant lease agreement must require the team affiliate to publicly disclose, on an

annual basis, an audited profit and loss financial statement. The team affiliate shall provide a guarantee, security, or a letter of credit from a person or entity with a net worth in excess of one hundred million dollars that guarantees a maximum of ten years' payments of fair rent under the lease in the event of the bankruptcy or insolvency of the team affiliate. The master tenant shall have the power to sublease and enter into use, license, and concession agreements with various users of the stadium and exhibition center including the professional football team, and the master tenant has the right to name the stadium and exhibition center, subject to section 107 of this act. The master tenant shall meet goals, established by the county where the stadium and exhibition center is located, for women and minority employment for the operation of the stadium and exhibition center. Except as provided in subsection (10) of this section, the master tenant shall have the right to retain revenues derived from the operation of the stadium and exhibition center, including revenues from the sublease and uses, license and concession agreements, revenues from suite licenses, concessions, advertising, long-term naming rights subject to section 107 of this act, and parking revenue. If federal law permits interest on bonds issued to finance the stadium and exhibition center to be treated as tax exempt for federal income tax purposes, the public stadium authority and the team affiliate shall endeavor to structure and limit the amounts, sources, and uses of any payments received by the state, the county, the public stadium authority, or any related governmental entity for the use or in respect to the stadium and exhibition center in such a manner as to permit the interest on those bonds to be

tax exempt. As used in this subsection, "fair rent" is solely intended to cover the reasonable operating expenses of the public stadium authority and shall be not less than eight hundred fifty thousand dollars per year with annual increases based on the consumer price index;

(9) Subject to section 210(2)(b)(ix) of this act, the public stadium authority may reserve the right to discuss profit sharing from the stadium and exhibition center from sources that have not been identified at the time the long-term lease agreement is executed;

(10) The master tenant may retain an amount to cover the actual cost of preparing the stadium and exhibition center for activities involving the Olympic Games and world cup soccer. Revenues derived from the operation of the stadium and exhibition center for activities identified in this subsection that exceed the master tenant's actual costs of preparing, operating, and restoring the stadium and exhibition center must be deposited into the tourism development and promotion account created in section 223 of this act;

(11) The public stadium authority, in consultation with a public facilities district that is located within the county, shall work to eliminate the use of the stadium and exhibition center for events during the same time as events are held in the baseball stadium as defined in RCW 82.14.0485;

(12) The public stadium authority, in consultation with the team affiliate, must work to secure the hosting of a Super Bowl, if the hosting requirements are changed by the national football league or similar professional football association;

(13) The public stadium authority shall work with surrounding areas to mitigate the impact of the construction and operation of the stadium and exhibition center;

(14) The public stadium authority, in consultation with the office of financial management, shall negotiate filming rights of the demolition of the existing domed stadium on the stadium and exhibition center site. All revenues derived from the filming of the demolition of the existing domed stadium shall be deposited into the film and video promotion account created in section 222 of this act; and

(15) The public stadium authority shall have the authority, upon the agreement of the team affiliate, to sell permanent seat licenses,and the team affiliate may act as the sales agent for this purpose.

NEW SECTION. **Sec. 107.** Revenues from the sales of naming rights of a stadium and exhibition center developed under section 105of this act may only be used for costs associated with capital improvements associated with modernization and maintenance of the stadium and exhibition center. The sales of naming rights are subject to the reasonable approval of the public stadium authority.

NEW SECTION. **Sec. 108.** A public stadium authority may accept and expend moneys that may be donated for the purpose of a stadium and exhibition center.

NEW SECTION. **Sec. 109.** (1) The public stadium authority, the county, and the city, if any, in which the stadium and exhibition center is to be located shall enter into one or more agreements regarding the construction

of a stadium and exhibition center. The agreements shall address, but not be limited to:

(a) Expedited permit processing for the design and construction of the stadium and exhibition center project;

(b) Expedited environmental review processing;

(c) Expedited processing of requests for street, right of way, or easement vacations necessary for the construction of the stadium and exhibition center project; and

(d) Other items deemed necessary for the design and construction of the stadium and exhibition center project.

(2) The county shall assemble such real property and associated personal property as the public stadium authority and the county mutually determine to be necessary as a site for the stadium and exhibition center. Property that is necessary for this purpose that is owned by the county on or after the effective date of this section shall be contributed to the authority, and property that is necessary for this purpose that is acquired by the county on or after the effective date of this section shall be conveyed to the authority. Property that is encumbered by debt may be transferred by the county to the authority, but obligation for payment of the debt may not be transferred.

(3) A new exhibition facility of at least three hundred twenty-five thousand square feet, with adequate on-site parking, shall be constructed and operational before any domed stadium in the county is demolished or rendered unusable. Demolition of any existing structure and construction of the stadium and exhibition center shall be

reasonably executed in a manner that minimizes impacts, including access and parking, upon existing facilities, users, and neighborhoods. No county or city may exercise authority under any landmarks preservation statute or ordinance in order to prevent or delay the demolition of any existing domed stadium at the site of the stadium and exhibition center.

NEW SECTION. **Sec. 110.** A public stadium authority may acquire and transfer real and personal property by lease, sublease, purchase, or sale.

NEW SECTION. **Sec. 111.** (1) The board of directors of the public stadium authority shall adopt a resolution that may be amended from time to time that shall establish the basic requirements governing methods and amounts of reimbursement payable to such authority and employees for travel and other business expenses incurred on behalf of the authority. The resolution shall, among other things, establish procedures for approving such expenses; the form of the travel and expense voucher; and requirements governing the use of credit cards issued in the name of the authority. The resolution may also establish procedures for payment of per diem to board members. The state auditor shall, as provided by general law, cooperate with the public stadium authority in establishing adequate procedures for regulating and auditing the reimbursement of all such expenses.

(2) The board of directors shall transmit a copy of the adopted annual operating budget of the public stadium authority to the governor and the majority leader and minority leader of the house of representatives and the senate. The budget information shall include, but is

not limited to a statement of income and expenses of the public stadium authority.

NEW SECTION. **Sec. 112.** The board of directors of the public stadium authority may authorize payment of actual and necessary expenses of officers and employees for lodging, meals, and travel-related costs incurred in attending meetings or conferences on behalf of the public stadium authority and strictly in the public interest and for public purposes. Officers and employees may be advanced sufficient sums to cover their anticipated expenses in accordance with rules adopted by the state auditor, which shall substantially conform to the procedures provided in RCW 43.03.150 through 43.03.210.

NEW SECTION. **Sec. 113.** Each member of the board of directors of the public stadium authority may receive compensation of fifty dollars per day for attending meetings or conferences on behalf of the authority, not to exceed three thousand dollars per year. A director may waive all or a portion of his or her compensation under this section as to a month or months during his or her term of office, by a written waiver filed with the public stadium authority. The compensation provided in this section is in addition to reimbursement for expenses paid to the directors by the public stadium authority.

NEW SECTION. **Sec. 114.** The board of directors of the public stadium authority may purchase liability insurance with such limits as the directors may deem reasonable for the purpose of protecting and holding personally harmless authority officers and employees against liability for personal or bodily injuries and property damage arising from their acts or omissions while

performing or in good faith purporting to perform their official duties.

NEW SECTION. **Sec. 115.** Whenever an action, claim, or proceeding is instituted against a person who is or was an officer or employee of the public stadium authority arising out of the performance of duties for or employment with the authority, the public stadium authority may grant a request by the person that the attorney of the authority's choosing be authorized to defend the claim, suit, or proceeding, and the costs of defense, attorneys' fees, and obligation for payments arising from the action may be paid from the authority's funds. Costs of defense or judgment or settlement against the person shall not be paid in a case where the court has found that the person was not acting in good faith or within the scope of employment with or duties for the public stadium authority.

NEW SECTION. **Sec. 116.** The board of directors of the public stadium authority shall have authority to authorize the expenditure of funds for the public purposes of preparing and distributing information to the general public about the stadium and exhibition center.

NEW SECTION. **Sec. 117.** The public stadium authority shall have authority to create and fill positions, fix wages and salaries, pay costs involved in securing or arranging to secure employees, and establish benefits for employees, including holiday pay, vacations or vacation pay, retirement benefits, medical, life, accident, or health disability insurance, as approved by the board. Public stadium authority board members, at their own expense,

shall be entitled to medical, life, accident, or health disability insurance. Insurance for employees and board members shall not be considered compensation. Authority coverage for the board is not to exceed that provided public stadium authority employees.

NEW SECTION. **Sec. 118.** The public stadium authority may secure services by means of an agreement with a service provider. The public stadium authority shall publish notice, establish criteria, receive and evaluate proposals, and negotiate with respondents under requirements set forth by authority resolution.

NEW SECTION. **Sec. 119.** The public stadium authority may refuse to disclose financial information on the master tenant, concessioners, the team affiliate, or subleasee under RCW 42.17.310.

**Sec. 120.** RCW 42.17.310 and 1996 c 305 s 2, 1996 c 253 s 302, 1996c 191 s 88, and 1996 c 80 s 1 are each reenacted and amended to read as follows:

(1) The following are exempt from public inspection and copying:

(a) Personal information in any files maintained for students in public schools, patients or clients of public institutions or public health agencies, or welfare recipients.

(b) Personal information in files maintained for employees, appointees, or elected officials of any public agency to the extent that disclosure would violate their right to privacy.

(c) Information required of any taxpayer in connection with the assessment or collection of any tax if the

disclosure of the information to other persons would (i) be prohibited to such persons by RCW 82.32.330 or (ii) violate the taxpayer's right to privacy or result in unfair competitive disadvantage to the taxpayer.

(d) Specific intelligence information and specific investigative records compiled by investigative, law enforcement, and penology agencies, and state agencies vested with the responsibility to discipline members of any profession, the nondisclosure of which is essential to effective law enforcement or for the protection of any person's right to privacy.

(e) Information revealing the identity of persons who are witnesses to or victims of crime or who file complaints with investigative, law enforcement, or penology agencies, other than the public disclosure commission, if disclosure would endanger any person's life, physical safety, or property. If at the time a complaint is filed the complainant, victim or witness indicates a desire for disclosure or nondisclosure, such desire shall govern. However, all complaints filed with the public disclosure commission about any elected official or candidate for public office must be made in writing and signed by the complainant under oath.

(f) Test questions, scoring keys, and other examination data used to administer a license, employment, or academic examination.

(g) Except as provided by chapter 8.26 RCW, the contents of real estate appraisals, made for or by any agency relative to the acquisition or sale of property, until the project or prospective sale is abandoned or until such time as all of the property has been acquired or the

property to which the sale appraisal relates is sold, but in no event shall disclosure be denied for more than three years after the appraisal.

(h) Valuable formulae, designs, drawings, and research data obtained by any agency within five years of the request for disclosure when disclosure would produce private gain and public loss.

(i) Preliminary drafts, notes, recommendations, and intra-agency memorandums in which opinions are expressed or policies formulated or recommended except that a specific record shall not be exempt when publicly cited by an agency in connection with any agency action.

(j) Records which are relevant to a controversy to which an agency is a party but which records would not be available to another party under the rules of pretrial discovery for causes pending in the superior courts.

(k) Records, maps, or other information identifying the location of archaeological sites in order to avoid the looting or depredation of such sites.

(l) Any library record, the primary purpose of which is to maintain control of library materials, or to gain access to information, which discloses or could be used to disclose the identity of a library user.

(m) Financial information supplied by or on behalf of a person, firm, or corporation for the purpose of qualifying to submit a bid or proposal for (i) a ferry system construction or repair contract as required by RCW 47.60.680 through 47.60.750 or (ii) highway construction or improvement as required by RCW 47.28.070.

(n) Railroad company contracts filed prior to July 28, 1991, with the utilities and transportation commission under RCW 81.34.070, except that the summaries of the contracts are open to public inspection and copying as otherwise provided by this chapter.

(o) Financial and commercial information and records supplied by private persons pertaining to export services provided pursuant to chapter 43.163 RCW and chapter 53.31 RCW, and by persons pertaining to export projects pursuant to RCW 43.23.035.

(p) Financial disclosures filed by private vocational schools under chapters 28B.85 and 28C.10 RCW.

(q) Records filed with the utilities and transportation commission or attorney general under RCW 80.04.095 that a court has determined are confidential under RCW 80.04.095.

(r) Financial and commercial information and records supplied by businesses or individuals during application for loans or program services provided by chapters 43.163, 43.160, 43.330, and 43.168 RCW,or during application for economic development loans or program services provided by any local agency.

(s) Membership lists or lists of members or owners of interests of units in timeshare projects, subdivisions, camping resorts, condominiums, land developments, or common-interest communities affiliated with such projects, regulated by the department of licensing, in the files or possession of the department.

(t) All applications for public employment, including the names of applicants, resumes, and other related materials submitted with respect to an applicant.

(u) The residential addresses and residential telephone numbers of employees or volunteers of a public agency which are held by the agency in personnel records, employment or volunteer rosters, or mailing lists of employees or volunteers.

(v) The residential addresses and residential telephone numbers of the customers of a public utility contained in the records or lists held by the public utility of which they are customers.

(w)(i) The federal social security number of individuals governed under chapter 18.130 RCW maintained in the files of the department of health, except this exemption does not apply to requests made directly to the department from federal, state, and local agencies of government, and national and state licensing, credentialing, investigatory, disciplinary, and examination organizations; (ii) the current residential address and current residential telephone number of a health care provider governed under chapter 18.130 RCW maintained in the files of the department, if the provider requests that this information be withheld from public inspection and copying, and provides to the department an accurate alternate or business address and business telephone number. On or after January 1, 1995, the current residential address and residential telephone number of a health care provider governed under RCW 18.130.140 maintained in the files of the department shall automatically be withheld from public inspection and copying unless

the provider specifically requests the information be released, and except as provided for under RCW 42.17.260(9).

(x) Information obtained by the board of pharmacy as provided in RCW 69.45.090.

(y) Information obtained by the board of pharmacy or the department of health and its representatives as provided in RCW 69.41.044, 69.41.280, and 18.64.420.

(z) Financial information, business plans, examination reports, and any information produced or obtained in evaluating or examining a business and industrial development corporation organized or seeking certification under chapter 31.24 RCW.

(aa) Financial and commercial information supplied to the state investment board by any person when the information relates to the investment of public trust or retirement funds and when disclosure would result in loss to such funds or in private loss to the providers of this information.

(bb) Financial and valuable trade information under RCW 51.36.120.

(cc) Client records maintained by an agency that is a domestic violence program as defined in RCW 70.123.020 or 70.123.075 or a rape crisis center as defined in RCW 70.125.030.

(dd) Information that identifies a person who, while an agency employee: (i) Seeks advice, under an informal process established by the employing agency, in order to ascertain his or her rights in connection with a possible

unfair practice under chapter 49.60 RCW against the person; and (ii) requests his or her identity or any identifying information not be disclosed.

(ee) Investigative records compiled by an employing agency conducting a current investigation of a possible unfair practice under chapter 49.60 RCW or of a possible violation of other federal, state, or local laws prohibiting discrimination in employment.

(ff) Business related information protected from public inspection and copying under RCW 15.86.110.

(gg) Financial, commercial, operations, and technical and research information and data submitted to or obtained by the clean Washington center in applications for, or delivery of, program services under chapter 70.95H RCW.

(hh) Information and documents created specifically for, and collected and maintained by a quality improvement committee pursuant to RCW 43.70.510, regardless of which agency is in possession of the information and documents.

(ii) Personal information in files maintained in a data base created under RCW 43.07.360.

(jj) Financial and commercial information requested by the public stadium authority from any person or organization that leases or uses the stadium and exhibition center as defined in section 101 of this act.

(2) Except for information described in subsection (1)(c)(i) of this section and confidential income data exempted from public inspection pursuant to RCW 84.40.020, the exemptions of this section are inapplicable

to the extent that information, the disclosure of which would violate personal privacy or vital governmental interests, can be deleted from the specific records sought. No exemption may be construed to permit the non-disclosure of statistical information not descriptive of any readily identifiable person or persons.

(3) Inspection or copying of any specific records exempt under the provisions of this section may be permitted if the superior court in the county in which the record is maintained finds, after a hearing with notice thereof to every person in interest and the agency, that the exemption of such records is clearly unnecessary to protect any individual's right of privacy or any vital governmental function.

(4) Agency responses refusing, in whole or in part, inspection of any public record shall include a statement of the specific exemption authorizing the withholding of the record (or part) and a brief explanation of how the exemption applies to the record withheld.

## PART II

## FINANCING

NEW SECTION. **Sec. 201.** (1) The governing board of a public stadium authority may apply for deferral of taxes on the construction of buildings, site preparation, and the acquisition of related machinery and equipment for a stadium and exhibition center. Application shall be made to the department of revenue in a form and manner prescribed by the department of revenue. The application shall contain information regarding the location of the

stadium and exhibition center, estimated or actual costs, time schedules for completion and operation, and other information required by the department of revenue. The department of revenue shall approve the application within sixty days if it meets the requirements of this section.

(2) The department of revenue shall issue a sales and use tax deferral certificate for state and local sales and use taxes due under chapters 82.08, 82.12, and 82.14 RCW on the public facility.

(3) The public stadium authority shall begin paying the deferred taxes in the fifth year after the date certified by the department of revenue as the date on which the stadium and exhibition center is operationally complete. The first payment is due on December 31st of the fifth calendar year after such certified date, with subsequent annual payments due on December 31st of the following nine years. Each payment shall equal ten percent of the deferred tax.

(4) The department of revenue may authorize an accelerated repayment schedule upon request of the public stadium authority.

(5) Interest shall not be charged on any taxes deferred under this section for the period of deferral, although all other penalties and interest applicable to delinquent excise taxes may be assessed and imposed for delinquent payments under this section. The debt for deferred taxes is not extinguished by insolvency or other failure of the public stadium authority.

(6) The repayment of deferred taxes and interest, if any, shall be deposited into the stadium and exhibition center account created in section 214 of this act and used to retire bonds issued under section 210 of this act to finance the construction of the stadium and exhibition center.

(7) Applications and any other information received by the department of revenue under this section are not confidential and are subject to disclosure. Chapter 82.32 RCW applies to the administration of this section.

**Sec. 202.** RCW 82.29A.130 and 1995 3rd sp.s. c 1 s 307 are each amended to read as follows:

The following leasehold interests shall be exempt from taxes imposed pursuant to RCW 82.29A.030 and 82.29A.040:

(1) All leasehold interests constituting a part of the operating properties of any public utility which is assessed and taxed as a public utility pursuant to chapter 84.12 RCW.

(2) All leasehold interests in facilities owned or used by a school, college or university which leasehold provides housing for students and which is otherwise exempt from taxation under provisions of RCW 84.36.010 and 84.36.050.

(3) All leasehold interests of subsidized housing where the fee ownership of such property is vested in the government of the United States, or the state of Washington or any political subdivision thereof but only if income qualification exists for such housing.

(4) All leasehold interests used for fair purposes of a nonprofit fair association that sponsors or conducts a fair or fairs which receive support from revenues collected pursuant to RCW 67.16.100 and allocated by the director of the department of agriculture where the fee ownership of such property is vested in the government of the United States, the state of Washington or any of its political subdivisions: PROVIDED, That this exemption shall not apply to the leasehold interest of any sublessee of such nonprofit fair association if such leasehold interest would be taxable if it were the primary lease.

(5) All leasehold interests in any property of any public entity used as a residence by an employee of that public entity who is required as a condition of employment to live in the publicly owned property.

(6) All leasehold interests held by enrolled Indians of lands owned or held by any Indian or Indian tribe where the fee ownership of such property is vested in or held in trust by the United States and which are not subleased to other than to a lessee which would qualify pursuant to this chapter, RCW 84.36.451 and 84.40.175.

(7) All leasehold interests in any real property of any Indian or Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States: PROVIDED, That this exemption shall apply only where it is determined that contract rent paid is greater than or equal to ninety percent of fair market rental, to be determined by the department of revenue using the same criteria used to establish taxable rent in RCW 82.29A.020(2)(b).

(8) All leasehold interests for which annual taxable rent is less than two hundred fifty dollars per year. For purposes of this subsection leasehold interests held by the same lessee in contiguous properties owned by the same lessor shall be deemed a single leasehold interest.

(9) All leasehold interests which give use or possession of the leased property for a continuous period of less than thirty days: PROVIDED, That for purposes of this subsection, successive leases or lease renewals giving substantially continuous use of possession of the same property to the same lessee shall be deemed a single leasehold interest: PROVIDED FURTHER, That no leasehold interest shall be deemed to give use or possession for a period of less than thirty days solely by virtue of the reservation by the public lessor of the right to use the property or to allow third parties to use the property on an occasional, temporary basis.

(10) All leasehold interests under month-to-month leases in residential units rented for residential purposes of the lessee pending destruction or removal for the purpose of constructing a public highway or building.

(11) All leasehold interests in any publicly owned real or personal property to the extent such leasehold interests arises solely by virtue of a contract for public improvements or work executed under the public works statutes of this state or of the United States between the public owner of the property and a contractor.

(12) All leasehold interests that give use or possession of state adult correctional facilities for the purposes of operating correctional industries under RCW 72.09.100.

(13) All leasehold interests used to provide organized and supervised recreational activities for disabled persons of all ages in a camp facility and for public recreational purposes by a nonprofit organization, association, or corporation that would be exempt from property tax under RCW 84.36.030(1) if it owned the property. If the publicly owned property is used for any taxable purpose, the leasehold excise taxes set forth in RCW 82.29A.030 and 82.29A.040 shall be imposed and shall be apportioned accordingly.

(14) All leasehold interests in the public or entertainment areas of a baseball stadium with natural turf and a retractable roof or canopy that is in a county with a population of over one million, that has a seating capacity of over forty thousand, and that is constructed on or after January 1, 1995. "Public or entertainment areas" include ticket sales areas, ramps and stairs, lobbies and concourses, parking areas, concession areas, restaurants, hospitality and stadium club areas, kitchens or other work areas primarily servicing other public or entertainment areas, public rest room areas, press and media areas, control booths, broadcast and production areas, retail sales areas, museum and exhibit areas, scoreboards or other public displays, storage areas, loading, staging, and servicing areas, seating areas and suites, the playing field, and any other areas to which the public has access or which are used for the production of the entertainment event or other public usage, and any other personal property used for these purposes. "Public or entertainment areas" does not include locker rooms or private offices exclusively used by the lessee.

(15) All leasehold interests in the public or entertainment areas of a stadium and exhibition center, as defined in section 101 of this act, that is constructed on or after January 1, 1998. For the purposes of this subsection, "public or entertainment areas" has the same meaning as in subsection (14) of this section, and includes exhibition areas.

NEW SECTION. **Sec. 203.** A new section is added to chapter 82.08 RCW to read as follows:

The tax levied by RCW 82.08.020 does not apply to vehicle parking charges that are subject to tax under section 302 of this act.

NEW SECTION. **Sec. 204.** A new section is added to chapter 82.14 RCW to read as follows:

(1) The legislative authority of a county that has created a public stadium authority to develop a stadium and exhibition center under section 105 of this act may impose a sales and use tax in accordance with this chapter. The tax is in addition to other taxes authorized by law and shall be collected from those persons who are taxable by the state under chapters 82.08 and 82.12 RCW upon the occurrence of any taxable event within the county. The rate of tax shall be 0.016 percent of the selling price in the case of a sales tax or value of the article used in the case of a use tax.

(2) The tax imposed under subsection (1) of this section shall be deducted from the amount of tax otherwise required to be collected or paid over to the department of revenue under chapter 82.08 or 82.12 RCW. The department of revenue shall perform the collection of

such taxes on behalf of the county at no cost to the county.

(3) Before the issuance of bonds in section 210 of this act, all revenues collected on behalf of the county under this section shall be transferred to the public stadium authority. After bonds are issued under section 210 of this act, all revenues collected on behalf of the county under this section shall be deposited in the stadium and exhibition center account under section 214 of this act.

(4) The definitions in section 101 of this act apply to this section.

(5) This section expires on the earliest of the following dates:

(a) December 31, 1999, if the conditions for issuance of bonds under section 210 of this act have not been met before that date;

(b) The date on which all bonds issued under section 210 of this act have been retired; or

(c) Twenty-three years after the date the tax under this section is first imposed.

NEW SECTION. **Sec. 205.** A new section is added to chapter 67.70 RCW to read as follows:

The lottery commission shall conduct new games that are in addition to any games conducted under RCW 67.70.042 and are intended to generate additional moneys sufficient to cover the distributions under RCW 67.70.240(5). No game may be conducted under this section before January 1, 1998. No game may be conducted under this section after December 31, 1999, unless the

conditions for issuance of the bonds under section 210(2) of this act are met, and no game is required to be conducted after the distributions cease under RCW 67.70.240(5).

For the purposes of this section, the lottery may accept and market prize promotions provided in conjunction with private-sector marketing efforts.

**Sec. 206.** RCW 67.70.240 and 1995 3rd sp.s. c 1 s 105 are each amended to read as follows:

The moneys in the state lottery account shall be used only:

(1) For the payment of prizes to the holders of winning lottery tickets or shares;

(2) For purposes of making deposits into the reserve account created by RCW 67.70.250 and into the lottery administrative account created by RCW 67.70.260;

(3) For purposes of making deposits into the state's general fund;

(4) ~~for purposes of making deposits into the housing trust fund under the provisions of section 7 of this 1987 act; (5)~~ For distribution to a county for the purpose of paying the principal and interest payments on bonds issued by the county to construct a baseball stadium, as defined in RCW 82.14.0485, including reasonably necessary preconstruction costs; ~~(6) for the purchase and promotion of lottery games and game-related services; and (7) for the payment of agent compensation.~~ Three million dollars shall be distributed under this subsection ~~(5) of this section~~ during calendar year 1996. During subsequent years, such distributions shall equal the prior

year's distributions increased by four percent. Distributions under this ~~(5) of this section~~ shall cease when the bonds issued for the construction of the baseball stadium are retired, but not more than twenty years after the tax under RCW 82.14.0485 is first imposed;

(5) For distribution to the stadium and exhibition center account, created in section 214 of this act. Subject to the conditions of section 215 of this act, six million dollars shall be distributed under this subsection during the calendar year 1998. During subsequent years, such distribution shall equal the prior year's distributions increased by four percent. No distribution may be made under this subsection after December 31, 1999, unless the conditions for issuance of the bonds under section 210(2) of this act are met. Distributions under this subsection shall cease when the bonds are retired, but not later than December 31, 2020;

(6) For the purchase and promotion of lottery games and game-related services; and

(7) For the payment of agent compensation.

The office of financial management shall require the allotment of all expenses paid from the account and shall report to the ways and means committees of the senate and house of representatives any changes in the allotments.

**Sec. 207.** RCW 67.70.042 and 1995 3rd sp.s. c 1 s 104 are each amended to read as follows:

The lottery commission shall conduct at least two but not more than four scratch games with sports themes per year. These games are intended to generate additional

moneys sufficient to cover the distributions under RCW 67.70.240~~(5)~~(4).

NEW SECTION. **Sec. 208**. A new section is added to chapter 67.70 RCW to read as follows:

The person or entity responsible for operating a stadium and exhibition center as defined in section 101 of this act shall promote the lottery with any combination of in-kind advertising, sponsorship, or prize promotions, valued at one million dollars annually beginning January 1998 and increased by four percent each year thereafter for the purpose of increasing lottery sales of games authorized under section 205 of this act. The content and value of the advertising sponsorship or prize promotions are subject to reasonable approval in advance by the lottery commission. The obligation of this section shall cease when the distributions under RCW 67.70.240(5) end, but not later than December 31, 2020.

NEW SECTION. **Sec. 209**. The definitions in section 101 of this act apply to this chapter.

NEW SECTION. **Sec. 210**. (1) For the purpose of providing funds to pay for operation of the public stadium authority created under section 102 of this act, to pay for the preconstruction, site acquisition, design, site preparation, construction, owning, leasing, and equipping of the stadium and exhibition center, and to reimburse the county or the public stadium authority for its direct or indirect expenditures or to repay other indebtedness incurred for these purposes, the state finance committee is authorized to issue general obligation bonds of the state of Washington in the sum of three hundred million dollars, or so much thereof as may be required,

for these purposes and all costs incidental thereto. Bonds authorized in this section may be sold at such price as the state finance committee shall determine.

(2) Bonds shall not be issued under this section unless the public stadium authority has certified to the director of financial management that:

(a) A professional football team has made a binding and legally enforceable contractual commitment to play all of its regular season and playoff home games in the stadium and exhibition center, other than games scheduled elsewhere by the league, for a period of time not shorter than the term of the bonds issued or to be issued to finance the initial construction of the stadium and exhibition center;

(b) A team affiliate has entered into one or more binding and legally enforceable contractual commitments with a public stadium authority under section 105 of this act that provide that:

(i) The team affiliate assumes the risks of cost overruns;

(ii) The team affiliate shall raise at least one hundred million dollars, less the amount, if any, raised by the public stadium authority under section 106(15) of this act. The total one hundred million dollars raised, which may include cash payments and in-kind contributions, but does not include any interest earned on the escrow account described in section 211 of this act, shall be applied toward the reasonably necessary preconstruction, site acquisition, design, site preparation, construction, and equipping of the stadium and exhibition center, or to

any associated public purpose separate from bond-financed expenses. No part of the payment may be made without the consent of the public stadium authority. In any event, all amounts to be raised by the team affiliate under (b)(ii) of this subsection shall be paid or expended before the completion of the construction of the stadium and exhibition center. To the extent possible, contributions shall be structured in a manner that would allow for the issuance of bonds to construct the stadium and exhibition center that are exempt from federal income taxes;

(iii) The team affiliate shall deposit at least ten million dollars into the youth athletic facility grant account created in section 214 of this act upon execution of the lease and development agreements in section 106 (7) and (8) of this act;

(iv) At least ten percent of the seats in the stadium for home games of the professional football team shall be for sale at an affordable price. For the purposes of this subsection, "affordable price" means that the price is the average of the lowest ticket prices charged by all other national football league teams;

(v) One executive suite with a minimum of twenty seats must be made available, on a lottery basis, as a free upgrade, at home games of the professional football team, to purchasers of tickets that are not located in executive suites or club seat areas;

(vi) A nonparticipatory interest in the professional football team has been granted to the state beginning on the date on which bonds are issued under this section which only entitles the state to receive ten percent of the gross selling price of the interest in the team that is

sold if a majority interest or more of the professional football team is sold within twenty-five years of the date on which bonds are issued under the section. The ten percent shall apply to all preceding sales of interests in the team which comprise the majority interest sold. This provision shall apply only to the first sale of such a majority interest. The ten percent must be deposited in the permanent common school fund. If the debt is retired at the time of the sale, then the ten percent may only be used for costs associated with capital maintenance, capital improvements, renovations, reequipping, replacement, and operations of the stadium and exhibition center;

(vii) The team affiliate must provide reasonable office space to the public stadium authority without charge;

(viii) The team affiliate, in consultation with the public stadium authority, shall work with surrounding areas to mitigate the impact of the construction and operation of the stadium and exhibition center with a budget of at least ten million dollars dedicated to area mitigation. For purposes of this subsection, "mitigation" includes, but is not limited to, parking facilities and amenities, neighborhood beautification projects and landscaping, financial grants for neighborhood programs intended to mitigate adverse impacts caused by the construction and operation of the stadium and exhibition center, and mitigation measures identified in the environmental impact statement required for the stadium and exhibition center under chapter 43.21C RCW; and

(ix) Twenty percent of the net profit from the operation of the exhibition facility of the stadium and

exhibition center shall be deposited into the permanent common school fund. Profits shall be verified by the public stadium authority.

NEW SECTION. **Sec. 211**. On or before August 1, 1997: (1) The state treasurer and a team affiliate or an entity that has an option to become a team affiliate shall enter into an escrow agreement creating an escrow account; and (2) the team affiliate or the entity that has an option to become a team affiliate shall deposit the sum of fifty million dollars into the escrow account as a credit against the obligation of the team affiliate in section 210(2)(b)(ii) of this act.

The escrow agreement shall provide that the fifty million dollar deposit shall be invested by the state treasurer and shall earn interest. If the stadium and exhibition center project proceeds, then the interest on amounts in the escrow account shall be for the benefit of the state, and all amounts in the escrow account, including all principal and interest, shall be distributed to the stadium and exhibition center account. The escrow agreement shall provide for appropriate adjustments based on amounts previously and subsequently raised by the team affiliate under section 210(2)(b)(ii) of this act and amounts previously and subsequently raised by the public stadium authority under section 106(15) of this act. If the stadium and exhibition center project does not proceed, all principal and the interest in the escrow account shall be distributed to the team affiliate or the entity that has an option to become a team affiliate.

NEW SECTION. **Sec. 212**. The proceeds from the sale of the bonds authorized in section 210 of this act shall be

deposited in the stadium and exhibition center construction account, hereby created in the custody of the state treasurer, and shall be used exclusively for the purposes specified in section 210 of this act and for the payment of expenses incurred in the issuance and sale of the bonds. These proceeds shall be administered by the office of financial management. Only the director of the office of financial management or the director's designee may authorize expenditures from the account. The account is subject to the allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. At the direction of the office of financial management the state treasurer shall transfer moneys from the stadium and exhibition center construction account to the public stadium authority created in section 102 of this act as required by the public stadium authority.

NEW SECTION. **Sec. 213.** The nondebt-limit reimbursable bond retirement account shall be used for the payment of the principal of and interest on the bonds authorized in section 210 of this act. The state finance committee shall, on or before June 30th of each year, certify to the state treasurer the amount needed in the ensuing twelve months to meet the bond retirement and interest requirements. On each date on which any interest or principal and interest payment is due, the state treasurer shall transfer from the stadium and exhibition center account to the nondebt-limit reimbursable bond retirement account an amount equal to the amount certified by the state finance committee to be due on the payment date. Bonds issued under section 210 of this act shall state that they are a general obligation of the state of Washington, shall pledge the full faith and credit of the

state to the payment of the principal thereof and the interest thereon, and shall contain an unconditional promise to pay the principal and interest as the same shall become due. If in any year the amount accumulated in the stadium and exhibition center account is insufficient for payment of the principal and interest on the bonds issued under section 210 of this act, the amount of the insufficiency shall be a continuing obligation against the stadium and exhibition center account until paid. The owner and holder of each of the bonds or the trustee for the owner and holder of any of the bonds may by mandamus or other appropriate proceeding require the transfer and payment of funds as directed in this section.

NEW SECTION. **Sec. 214.** (1) The stadium and exhibition center account is created in the custody of the state treasurer. All receipts from the taxes imposed under section 204 of this act and distributions under RCW 67.70.240(5) shall be deposited into the account. Only the director of the office of financial management or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW. An appropriation is not required for expenditures from this account.

(2) Until bonds are issued under section 210 of this act, up to five million dollars per year beginning January 1, 1999, shall be used for the purposes of subsection (3)(b) of this section, all remaining moneys in the account shall be transferred to the public stadium authority, created under section 102 of this act, to be used for public stadium authority operations and development of the stadium and exhibition center.

(3) After bonds are issued under section 210 of this act, all moneys in the stadium and exhibition center account shall be used exclusively for the following purposes in the following priority:

(a) On or before June 30th of each year, the office of financial management shall accumulate in the stadium and exhibition center account an amount at least equal to the amount required in the next succeeding twelve months for the payment of principal of and interest on the bonds issued under section 210 of this act;

(b) An additional reserve amount not in excess of the expected average annual principal and interest requirements of bonds issued under section 210 of this act shall be accumulated and maintained in the account, subject to withdrawal by the state treasurer at any time if necessary to meet the requirements of (a) of this subsection, and, following any withdrawal, reaccumulated from the first tax revenues and other amounts deposited in the account after meeting the requirements of (a) of this subsection; and

(c) The balance, if any, shall be transferred to the youth athletic facility grant account under subsection (4) of this section.

Any revenues derived from the taxes authorized by RCW 36.38.010(5) and section 302 of this act or other amounts that if used as provided under (a) and (b) of this subsection would cause the loss of any tax exemption under federal law for interest on bonds issued under section 210 of this act shall be deposited in and used exclusively for the purposes of the youth athletic facility grant account and shall not be used, directly or indirectly,

as a source of payment of principal of or interest on bonds issued under section 210 of this act, or to replace or reimburse other funds used for that purpose.

(4) Any moneys in the stadium and exhibition center account not required or permitted to be used for the purposes described in subsection (3)(a) and (b) of this section shall be deposited in the youth athletic facility grant account hereby created in the state treasury. Expenditures from the account may be used only for purposes of grants to cities, counties, and qualified nonprofit organizations for youth athletic facilities. Only the director of the interagency committee for outdoor recreation or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. The athletic facility grants may be used for acquiring, developing, equipping, maintaining, and improving youth or community athletic facilities. Funds shall be divided equally between the development of new athletic facilities, the improvement of existing athletic facilities, and the maintenance of existing athletic facilities. Cities, counties, and qualified nonprofit organizations must submit proposals for grants from the account. To the extent that funds are available, cities, counties, and qualified nonprofit organizations must meet eligibility criteria as established by the director of the interagency committee for outdoor recreation. The grants shall be awarded on a competitive application process and the amount of the grant shall be in proportion to the population of the city or county for where the youth athletic facility is located. Grants awarded in any one year need not be distributed in that year. The director

of the interagency committee for outdoor recreation may expend up to one and one-half percent of the moneys deposited in the account created in this subsection for administrative purposes.

NEW SECTION. **Sec. 215**. Unless the office of financial management certifies by December 31, 1997, that the following conditions have been met, sections 201 through 208 of this act are null and void:

(1) The professional football team that will use the stadium and exhibition center is at least majority-owned and controlled by, directly or indirectly, one or more persons who are each residents of the state of Washington and who have been residents of the state of Washington continuously since at least January 1, 1993;

(2) The county in which the stadium and exhibition center is to be constructed has created a public stadium authority under this chapter to acquire property, construct, own, remodel, maintain, equip, reequip, repair, and operate a stadium and exhibition center;

(3) The county in which the stadium and exhibition center is to be constructed has enacted the taxes authorized in RCW 36.38.010(5) and section 302 of this act; and

(4) The county in which the stadium and exhibition center is to be constructed pledges to maintain and continue the taxes authorized in RCW 36.38.010(5), 67.28.180, and section 302 of this act until the bonds authorized in section 210 of this act are fully redeemed, both principal and interest.

NEW SECTION. **Sec. 216.** The legislature may provide additional means for raising moneys for the payment of the principal of and interest on the bonds authorized in section 210 of this act, and section 213 of this act shall not be deemed to provide an exclusive method for the payment.

NEW SECTION. **Sec. 217.** The bonds authorized in section 210 of this act shall be a legal investment for all state funds or funds under state control and for all funds of any other public body.

NEW SECTION. **Sec. 218.** (1) The total public share of a stadium and exhibition center shall not exceed three hundred million dollars. For the purposes of this section, "total public share" means all state and local funds expended for preconstruction and construction costs of the stadium and exhibition center, including proceeds of any bonds issued for the purposes of the stadium and exhibition center, tax revenues, and interest earned on the escrow account described in section 211 of this act and not including expenditures for deferred sales taxes. (2) Sections 201 through 207, chapter . . . , Laws of 1997 (sections 201 through 207 of this act) and this chapter constitute the entire state contribution for a stadium and exhibition center. The state will not make any additional contributions based on revised cost or revenue estimates, cost overruns, unforeseen circumstances, or any other reason.

NEW SECTION. **Sec. 219.** The bonds authorized for the purposes identified in section 210 of this act are exempt from the statutory limitations of indebtedness under RCW 39.42.060.

**Sec. 220.** RCW 39.42.060 and 1993 c 52 s 1 are each amended to read as follows:

No bonds, notes, or other evidences of indebtedness for borrowed money shall be issued by the state which will cause the aggregate debt contracted by the state to exceed that amount for which payments of principal and interest in any fiscal year would require the state to expend more than seven percent of the arithmetic mean of its general state revenues, as defined in section 1(c) of Article VIII of the Washington state Constitution for the three immediately preceding fiscal years as certified by the treasurer in accordance with RCW 39.42.070. It shall be the duty of the state finance committee to compute annually the amount required to pay principal of and interest on outstanding debt. In making such computation, the state finance committee shall include all borrowed money represented by bonds, notes, or other evidences of indebtedness which are secured by the full faith and credit of the state or are required to be paid, directly or indirectly, from general state revenues and which are incurred by the state, any department, authority, public corporation or quasi public corporation of the state, any state university or college, or any other public agency created by the state but not by counties, cities, towns, school districts, or other municipal corporations, and shall include debt incurred pursuant to section 3 of Article VIII of the Washington state Constitution, but shall exclude the following:

(1) Obligations for the payment of current expenses of state government;

(2) Indebtedness incurred pursuant to RCW 39.42.080 or 39.42.090;

(3) Principal of and interest on bond anticipation notes;

(4) Any indebtedness which has been refunded;

(5) Financing contracts entered into under chapter 39.94 RCW;

(6) Indebtedness authorized or incurred before July 1, 1993, pursuant to statute which requires that the state treasury be reimbursed, in the amount of the principal of and the interest on such indebtedness, from money other than general state revenues or from the special excise tax imposed pursuant to chapter 67.40 RCW;

(7) Indebtedness authorized and incurred after July 1, 1993, pursuant to statute that requires that the state treasury be reimbursed, in the amount of the principal of and the interest on such indebtedness, from (a) moneys outside the state treasury, except higher education operating fees, (b) higher education building fees, (c) indirect costs recovered from federal grants and contracts, and (d) fees and charges associated with hospitals operated or managed by institutions of higher education; ~~and~~

(8) Any agreement, promissory note, or other instrument entered into by the state finance committee under RCW 39.42.030 in connection with its acquisition of bond insurance, letters of credit, or other credit support instruments for the purpose of guaranteeing the payment or enhancing the marketability, or both, of any state bonds, notes, or other evidence of indebtedness; and

(9) Indebtedness incurred for the purposes identified in section 210 of this act. To the extent necessary because of the constitutional or statutory debt limitation, priorities with respect to the issuance or guaranteeing of bonds, notes, or other evidences of indebtedness by the state shall be determined by the state finance committee.

**Sec. 221**. RCW 43.79A.040 and 1996 c 253 s 409 are each amended to read as follows:

(1) Money in the treasurer's trust fund may be deposited, invested and reinvested by the state treasurer in accordance with RCW 43.84.080 in the same manner and to the same extent as if the money were in the state treasury.

(2) All income received from investment of the treasurer's trust fund shall be set aside in an account in the treasury trust fund to be known as the investment income account.

(3) The investment income account may be utilized for the payment of purchased banking services on behalf of treasurer's trust funds including, but not limited to, depository, safekeeping, and disbursement functions for the state treasurer or affected state agencies. The investment income account is subject in all respects to chapter 43.88 RCW, but no appropriation is required for payments to financial institutions. Payments shall occur prior to distribution of earnings set forth in subsection (4) of this section.

(4)(a) Monthly, the state treasurer shall distribute the earnings credited to the investment income account to the state general fund except under (b) and (c) of this subsection.

(b) The following accounts and funds shall receive their proportionate share of earnings based upon each account's or fund's average daily balance for the period: The agricultural local fund, the American Indian scholarship endowment fund, the Washington international exchange scholarship endowment fund, the energy account, the fair fund, the game farm alternative account, the grain inspection revolving fund, the rural rehabilitation account, the stadium and exhibition center account, the youth athletic facility grant account, and the self-insurance revolving fund. However, the earnings to be distributed shall first be reduced by the allocation to the state treasurer's service fund pursuant to RCW 43.08.190.

(c) The following accounts and funds shall receive eighty percent of their proportionate share of earnings based upon each account's or fund's average daily balance for the period: The advanced right of way revolving fund, the federal narcotics asset forfeitures account, the high occupancy vehicle account, and the local rail service assistance account.

(5) In conformance with Article II, section 37 of the state Constitution, no trust accounts or funds shall be allocated earnings without the specific affirmative directive of this section.

NEW SECTION. **Sec. 222.** A new section is added to chapter 43.330 RCW to read as follows: The film and video promotion account is created in the state treasury. All receipts from section 106(14) of this act must be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used by the department of community,

trade, and economic development only for the purposes of promotion of the film and video production industry in the state of Washington.

NEW SECTION. **Sec. 223.** A new section is added to chapter 43.330 RCW to read as follows:

The tourism development and promotion account is created in the state treasury. All receipts from section 106(10) of this act must be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used by the department of community, trade, and economic development only for the purposes of promotion of the tourism industry in the state of Washington.

## PART III
## LOCAL CONTRIBUTION

**Sec. 301.** RCW 36.38.010 and 1995 3rd sp.s. c 1 s 203 are each amended to read as follows:

(1) Any county may by ordinance enacted by its county legislative authority, levy and fix a tax of not more than one cent on twenty cents or fraction thereof to be paid for county purposes by persons who pay an admission charge to any place, including a tax on persons who are admitted free of charge or at reduced rates to any place for which other persons pay a charge or a regular higher charge for the same or similar privileges or accommodations; and require that one who receives any admission charge to any place shall collect and remit the tax to the county treasurer of the county: PROVIDED, No county shall impose such tax on persons paying an

admission to any activity of any elementary or secondary school.

(2) As used in this chapter, the term "admission charge" includes a charge made for season tickets or subscriptions, a cover charge, or a charge made for use of seats and tables, reserved or otherwise, and other similar accommodations; a charge made for food and refreshments in any place where any free entertainment, recreation, or amusement is provided; a charge made for rental or use of equipment or facilities for purpose of recreation or amusement, and where the rental of the equipment or facilities is necessary to the enjoyment of a privilege for which a general admission is charged, the combined charges shall be considered as the admission charge. It shall also include any automobile parking charge where the amount of such charge is determined according to the number of passengers in any automobile.

(3) Subject to subsections (4) and (5) of this section, the tax herein authorized shall not be exclusive and shall not prevent any city or town within the taxing county, when authorized by law, from imposing within its corporate limits a tax of the same or similar kind: PROVIDED, That whenever the same or similar kind of tax is imposed by any such city or town, no such tax shall be levied within the corporate limits of such city or town by the county, ~~except that~~.

(4) Notwithstanding subsection (3) of this section, the legislative authority of a county with a population of one million or more may exclusively levy taxes on events in baseball stadiums constructed on or after January 1, 1995, that are owned by a public facilities district under

chapter 36.100 RCW and that have seating capacities over forty thousand at the rates of:

(a) Not more than one cent on twenty cents or fraction thereof, to be used for the purpose of paying the principal and interest payments on bonds issued by a county to construct a baseball stadium as defined in RCW 82.14.0485. If the revenue from the tax exceeds the amount needed for that purpose, the excess shall be placed in a contingency fund which may only be used to pay unanticipated capital costs on the baseball stadium, excluding any cost overruns on initial construction; and

(b) Not more than one cent on twenty cents or fraction thereof, to be used for the purpose of paying the principal and interest payments on bonds issued by a county to construct a baseball stadium as defined in RCW 82.14.0485. The tax imposed under this subsection ~~(3)~~(4)(b) shall expire when the bonds issued for the construction of the baseball stadium are retired, but not later than twenty years after the tax is first collected.

(5) Notwithstanding subsection (3) of this section, the legislative authority of a county that has created a public stadium authority to develop a stadium and exhibition center under section 105 of this act may levy and fix a tax on charges for admission to events in a stadium and exhibition center, as defined in section 101 of this act, constructed in the county on or after January 1, 1998, that is owned by a public stadium authority under chapter 36. - RCW (sections 101 through 119 and 201 of this act). The tax shall be exclusive and shall preclude the city or town within which the stadium and exhibition center is located from imposing a tax of the same or similar kind on

charges for admission to events in the stadium and exhibition center, and shall preclude the imposition of a general county admissions tax on charges for admission to events in the stadium and exhibition center. For the purposes of this subsection, "charges for admission to events" means only the actual admission charge, exclusive of taxes and service charges and the value of any other benefit conferred by the admission. The tax authorized under this subsection shall be at the rate of not more than one cent on ten cents or fraction thereof. Revenues collected under this subsection shall be deposited in the stadium and exhibition center account under section 214 of this act until the bonds issued under section 210 of this act for the construction of the stadium and exhibition center are retired. After the bonds issued for the construction of the stadium and exhibition center are retired, the tax authorized under this section shall be used exclusively to fund repair, reequipping, and capital improvement of the stadium and exhibition center. The tax under this subsection may be levied upon the first use of any part of the stadium and exhibition center but shall not be collected at any facility already in operation as of the effective date of this section.

NEW SECTION. **Sec. 302.** A new section is added to chapter 36.38 RCW to read as follows:

The legislative authority of a county that has created a public stadium authority to develop a stadium and exhibition center under section 105 of this act may levy and fix a tax on any vehicle parking charges imposed at any parking facility that is part of a stadium and exhibition center, as defined in section 101 of this act. The tax shall be exclusive and shall preclude the city or town

within which the stadium and exhibition center is located from imposing within its corporate limits a tax of the same or similar kind on any vehicle parking charges imposed at any parking facility that is part of a stadium and exhibition center. For the purposes of this section, "vehicle parking charges" means only the actual parking charges exclusive of taxes and service charges and the value of any other benefit conferred. The tax authorized under this section shall be at the rate of not more than ten percent. Revenues collected under this section shall be deposited in the stadium and exhibition center account under section 214 of this act until the bonds issued under section 210 of this act for the construction of the stadium and exhibition center are retired. After the bonds issued for the construction of the stadium and exhibition center are retired, the tax authorized under this section shall be used exclusively to fund repair, reequipping, and capital improvement of the stadium and exhibition center. The tax under this section may be levied upon the first use of any part of the stadium and exhibition center but shall not be collected at any facility already in operation as of the effective date of this section.

## PART IV

## PUBLIC WORKS PROVISIONS

**Sec. 401**. RCW 36.32.235 and 1996 c 219 s 2 are each amended to read as follows:

(1) In each county with a population of one million or more which by resolution establishes a county purchasing department, the purchasing department shall enter into leases of personal property on a competitive

basis and purchase all supplies, materials, and equipment on a competitive basis, for all departments of the county, as provided in this chapter and chapter 39.04 RCW, except that the county purchasing department is not required to make purchases that are paid from the county road fund or equipment rental and revolving fund.

(2) As used in this section, "public works" has the same definition as in RCW 39.04.010.

(3) Except as otherwise specified in this chapter or in chapter 36.77 RCW, all counties subject to these provisions shall contract on a competitive basis for all public works after bids have been submitted to the county upon specifications therefor. Such specifications shall be in writing and shall be filed with the clerk of the county legislative authority for public inspection.

(4) An advertisement shall be published in the county official newspaper stating the time and place where bids will be opened, the time after which bids will not be received, the character of the work to be done, the materials and equipment to be furnished, and that specifications therefor may be seen at the office of the clerk of the county legislative authority. An advertisement shall also be published in a legal newspaper of general circulation in or as near as possible to that part of the county in which such work is to be done. If the county official newspaper is a newspaper of general circulation covering at least forty percent of the residences in that part of the county in which such public works are to be done, then the publication of an advertisement of the applicable specifications in the county official newspaper is sufficient. Such advertisements shall be published at least

once at least thirteen days prior to the last date upon which bids will be received.

(5) The bids shall be in writing, shall be filed with the clerk, shall be opened and read in public at the time and place named therefor in the advertisements, and after being opened, shall be filed for public inspection. No bid may be considered for public work unless it is accompanied by a bid deposit in the form of a surety bond, postal money order, cash, cashier's check, or certified check in an amount equal to five percent of the amount of the bid proposed.

(6) The contract for the public work shall be awarded to the lowest responsible bidder. Any or all bids may be rejected for good cause. The county legislative authority shall require from the successful bidder for such public work a contractor's bond in the amount and with the conditions imposed by law.

(7) If the bidder to whom the contract is awarded fails to enter into the contract and furnish the contractor's bond as required within ten days after notice of the award, exclusive of the day of notice, the amount of the bid deposit shall be forfeited to the county and the contract awarded to the next lowest and best bidder. The bid deposit of all unsuccessful bidders shall be returned after the contract is awarded and the required contractor's bond given by the successful bidder is accepted by the county legislative authority. Immediately after the award is made, the bid quotations obtained shall be recorded and open to public inspection and shall be available by telephone inquiry.

(8) As limited by subsection (10) of this section, a county subject to these provisions may have public works performed by county employees in any annual or biennial budget period equal to a dollar value not exceeding ten percent of the public works construction budget, including any amount in a supplemental public works construction budget, over the budget period.

Whenever a county subject to these provisions has had public works performed in any budget period up to the maximum permitted amount for that budget period, all remaining public works except emergency work under subsection (12) of this section within that budget period shall be done by contract pursuant to public notice and call for competitive bids as specified in subsection (3) of this section. The state auditor shall report to the state treasurer any county subject to these provisions that exceeds this amount and the extent to which the county has or has not reduced the amount of public works it has performed by public employees in subsequent years.

(9) If a county subject to these provisions has public works performed by public employees in any budget period that are in excess of this ten percent limitation, the amount in excess of the permitted amount shall be reduced from the otherwise permitted amount of public works that may be performed by public employees for that county in its next budget period. Ten percent of the motor vehicle fuel tax distributions to that county shall be withheld if two years after the year in which the excess amount of work occurred, the county has failed to so reduce the amount of public works that it has performed by public employees. The amount withheld shall be distributed to the county when it has demonstrated in

its reports to the state auditor that the amount of public works it has performed by public employees has been reduced as required.

(10) In addition to the percentage limitation provided in subsection (8) of this section, counties subject to these provisions containing a population of one million or more shall not have public employees perform a public works project in excess of seventy thousand dollars if more than a single craft or trade is involved with the public works project, or a public works project in excess of twenty-five thousand dollars if only a single craft or trade is involved with the public works project. A public works project means a complete project. The restrictions in this subsection do not permit the division of the project into units of work or classes of work to avoid the restriction on work that may be performed by public employees on a single project.

The cost of a separate public works project shall be the costs of materials, supplies, equipment, and labor on the construction of that project. The value of the public works budget shall be the value of all the separate public works projects within the budget.

(11) In addition to the accounting and record keeping requirements contained in chapter 39.04 RCW, any county which uses public employees to perform public works projects under RCW 36.32.240(1) shall prepare a year-end report to be submitted to the state auditor indicating the total dollar amount of the county's public works construction budget and the total dollar amount for public works projects performed by public employees for that year.

The year-end report submitted pursuant to this subsection to the state auditor shall be in accordance with the standard form required by RCW 43.09.205.

(12) Notwithstanding any other provision in this section, counties may use public employees without any limitation for emergency work performed under an emergency declared pursuant to RCW 36.32.270, and any such emergency work shall not be subject to the limitations of this section. Publication of the description and estimate of costs relating to correcting the emergency may be made within seven days after the commencement of the work. Within two weeks of the finding that such an emergency existed, the county legislative authority shall adopt a resolution certifying the damage to public facilities and costs incurred or anticipated relating to correcting the emergency. Additionally this section shall not apply to architectural and engineering or other technical or professional services performed by public employees in connection with a public works project.

(13) In lieu of the procedures of subsections (3) through (11) of this section, a county may use a small works roster process and award contracts for public works projects with an estimated value of ten thousand dollars up to one hundred thousand dollars as provided in RCW 39.04.155.

Whenever possible, the county shall invite at least one proposal from a minority or woman contractor who shall otherwise qualify under this section.

(14) The allocation of public works projects to be performed by county employees shall not be subject to a collective bargaining agreement.

(15) This section does not apply to performance-based contracts, as defined in RCW 39.35A.020(3), that are negotiated under chapter 39.35A RCW.

(16) Nothing in this section prohibits any county from allowing for preferential purchase of products made from recycled materials or products that may be recycled or reused.

(17) This section does not apply to contracts between the public stadium authority and a team affiliate under section 106(4) of this act, or development agreements between the public stadium authority and a team affiliate under section 106(7) of this act or leases entered into under section 106(8) of this act.

**Sec. 402**. RCW 39.04.010 and 1993 c 174 s 1 are each amended to read as follows:

The term state shall include the state of Washington and all departments, supervisors, commissioners and agencies thereof.

The term municipality shall include every city, county, town, district or other public agency thereof which is authorized by law to require the execution of public work, except drainage districts, diking districts, diking and drainage improvement districts, drainage improvement districts, diking improvement districts, consolidated diking and drainage improvement districts, consolidated drainage improvement districts, consolidated diking improvement districts, irrigation districts or any such other districts as shall from time to time be authorized by law for the reclamation or development of waste or undeveloped lands.

The term public work shall include all work, construction, alteration, repair, or improvement other than ordinary maintenance, executed at the cost of the state or of any municipality, or which is by law a lien or charge on any property therein. All public works, including maintenance when performed by contract shall comply with the provisions of RCW 39.12.020. The term does not include work, construction, alteration, repair, or improvement performed under contracts entered into under section 106(4) of this act or under development agreements entered into under section 106(7) of this act or leases entered into under section 106(8) of this act.

The term contract shall mean a contract in writing for the execution of public work for a fixed or determinable amount duly awarded after advertisement and competitive bid. However, a contract which is awarded from a small works roster under the authority of RCW 39.04.150, 35.22.620, 28B.10.355, 35.82.075, and 57.08.050 need not be advertised.

NEW SECTION. **Sec. 403.** A new section is added to chapter 39.30 RCW to read as follows:

This chapter does not apply to contracts entered into under section 106(4) of this act or development agreements entered into under section 106(7) of this act.

**Sec. 404.** RCW 39.10.120 and 1995 3rd sp.s. c 1 s 305 are each amended to read as follows:

(1) Except as provided in subsections (2) and (3) of this section, the alternative public works contracting procedures authorized under this chapter are limited to public works contracts signed before July 1, ~~1997~~ 2001.

Methods of public works contracting authorized by RCW 39.10.050 and 39.10.060 shall remain in full force and effect until completion of contracts signed before July 1, ~~1997~~ 2001.

(2) For the purposes of a baseball stadium as defined in RCW 82.14.0485, the design-build contracting procedures under RCW 39.10.050 shall remain in full force and effect until completion of contracts signed before December 31, 1997.

(3) For the purposes of a stadium and exhibition center, as defined in section 101 of this act, the design-build contracting procedures under RCW 39.10.050 shall remain in full force and effect until completion of contracts signed before December 31, 2002.

PART V

KINGDOME DEBT

**Sec. 501.** RCW 67.28.180 and 1995 1st sp.s. c 14 s 10 are each amended to read as follows:

(1) Subject to the conditions set forth in subsections (2) and (3) of this section, the legislative body of any county or any city, is authorized to levy and collect a special excise tax of not to exceed two percent on the sale of or charge made for the furnishing of lodging by a hotel, rooming house, tourist court, motel, trailer camp, and the granting of any similar license to use real property, as distinguished from the renting or leasing of real property: PROVIDED, That it shall be presumed that the occupancy of real property for a continuous period of one

month or more constitutes a rental or lease of real property and not a mere license to use or to enjoy the same.

(2) Any levy authorized by this section shall be subject to the following:

(a) Any county ordinance or resolution adopted pursuant to this section shall contain, in addition to all other provisions required to conform to this chapter, a provision allowing a credit against the county tax for the full amount of any city tax imposed pursuant to this section upon the same taxable event.

(b) In the event that any county has levied the tax authorized by this section and has, prior to June 26, 1975, either pledged the tax revenues for payment of principal and interest on city revenue or general obligation bonds authorized and issued pursuant to RCW 67.28.150 through 67.28.160 or has authorized and issued revenue or general obligation bonds pursuant to the provisions of RCW 67.28.150 through 67.28.160, such county shall be exempt from the provisions of (a) of this subsection, to the extent that the tax revenues are pledged for payment of principal and interest on bonds issued at any time pursuant to the provisions of RCW 67.28.150 through 67.28.160: PROVIDED, That so much of such pledged tax revenues, together with any investment earnings thereon, not immediately necessary for actual payment of principal and interest on such bonds may be used: (i) In any county with a population of one million or more, for repayment either of limited tax levy general obligation bonds or of any county fund or account from which a loan was made, the proceeds from the bonds or loan being used to pay for constructing, installing, improving,

and equipping stadium capital improvement projects, and to pay for any engineering, planning, financial, legal and professional services incident to the development of such stadium capital improvement projects, regardless of the date the debt for such capital improvement projects was or may be incurred; ~~or~~ (ii) in any county with a population of one million or more, for repayment or refinancing of bonded indebtedness incurred prior to January 1, 1997, for any purpose authorized by this section or relating to stadium repairs or rehabilitation, including but not limited to the cost of settling legal claims, reimbursing operating funds, interest payments on short-term loans, and any other purpose for which such debt has been incurred if the county has created a public stadium authority to develop a stadium and exhibition center under section 103 of this act; or (iii) in other counties, for county-owned facilities for agricultural promotion. A county is exempt under this subsection in respect to city revenue or general obligation bonds issued after April 1, 1991, only if such bonds mature before January 1, 2013.

As used in this subsection (2)(b), "capital improvement projects" may include, but not be limited to a stadium restaurant facility, restroom facilities, artificial turf system, seating facilities, parking facilities and scoreboard and information system adjacent to or within a county owned stadium, together with equipment, utilities, accessories and appurtenances necessary thereto. The stadium restaurant authorized by this subsection (2)(b) shall be operated by a private concessionaire under a contract with the county.

(c)(i) No city within a county exempt under subsection (2)(b)of this section may levy the tax authorized by

this section so long as said county is so exempt: ~~PROVIDED, That:~~

(ii) If bonds have been issued under section 210 of this act and any necessary property transfers have been made under section 109 of this act, no city within a county with a population of one million or more may levy the tax authorized by this section before January 1, 2021.

(iii) However, in the event that any city in ~~such~~ a county described in (i) or (ii) of this subsection (2)(c) has levied the tax authorized by this section and has, prior to June 26, 1975, authorized and issued revenue or general obligation bonds pursuant to the provisions of RCW 67.28.150 through 67.28.160, such city may levy the tax so long as the tax revenues are pledged for payment of principal and interest on bonds issued at any time pursuant to the provisions of RCW 67.28.150 through 67.28.160.

(3) Any levy authorized by this section by a county that has levied the tax authorized by this section and has, prior to June 26, 1975, either pledged the tax revenues for payment of principal and interest on city revenue or general obligation bonds authorized and issued pursuant to RCW 67.28.150 through 67.28.160 or has authorized and issued revenue or general obligation bonds pursuant to the provisions of RCW 67.28.150 through 67.28.160 shall be subject to the following:

(a) Taxes collected under this section in any calendar year before 2013 in excess of five million three hundred thousand dollars shall only be used as follows:

(i) Seventy-five percent from January 1, 1992, through December 31, 2000, and seventy percent from January 1, 2001, through December 31, 2012, for art museums, cultural museums, heritage museums, the arts, and the performing arts. Moneys spent under this subsection (3)(a)(i) shall be used for the purposes of this subsection (3)(a)(i) in all parts of the county.

(ii) Twenty-five percent from January 1, 1992, through December 31, 2000, and thirty percent from January 1, 2001, through December 31, 2012, for the following purposes and in a manner reflecting the following order of priority: Stadium ~~capital improvements, as defined in~~ purposes as authorized under subsection (2)(b) of this section; acquisition of open space lands; youth sports activities; and tourism promotion. If all or part of the debt on the stadium is refinanced, all revenues under this subsection (3)(a)(ii) shall be used to retire the debt.

(b) From January 1, 2013, through December 31, 2015, in a county with a population of one million or more, all revenues under this section shall be used to retire the debt on the stadium, or deposited in the stadium and exhibition center account under section 214 of this act after the debt on the stadium is retired.

(c) From January 1, 2016, through December 31, 2020, in a county with a population of one million or more, all revenues under this section shall be deposited in the stadium and exhibition center account under section 214 of this act.

(d) At least seventy percent of moneys spent under (a)(i) of this subsection for the period January 1, 1992, through December 31, 2000, shall be used only for the

purchase, design, construction, and remodeling of performing arts, visual arts, heritage, and cultural facilities, and for the purchase of fixed assets that will benefit art, heritage, and cultural organizations. For purposes of this subsection, fixed assets are tangible objects such as machinery and other equipment intended to be held or used for ten years or more. Moneys received under this subsection (3)~~(b)~~(d) may be used for payment of principal and interest on bonds issued for capital projects. Qualifying organizations receiving moneys under this subsection (3)~~(b)~~(d) must be financially stable and have at least the following:

(i) A legally constituted and working board of directors;

(ii) A record of artistic, heritage, or cultural accomplishments;

(iii) Been in existence and operating for at least two years;

(iv) Demonstrated ability to maintain net current liabilities at less than thirty percent of general operating expenses;

(v) Demonstrated ability to sustain operational capacity subsequent to completion of projects or purchase of machinery and equipment; and

(vi) Evidence that there has been independent financial review of the organization.

~~(c)~~(e) At least forty percent of the revenues distributed pursuant to (a)(i) of this subsection for the period January 1, 2001, through December 31, 2012, shall be deposited in an account and shall be used to establish an

endowment. Principal in the account shall remain permanent and irreducible. The earnings from investments of balances in the account may only be used for the purposes of (a)(i) of this subsection.

~~(d)~~(f) School districts and schools shall not receive revenues distributed pursuant to (a)(i) of this subsection.

~~(e)~~(g) Moneys distributed to art museums, cultural museums, heritage museums, the arts, and the performing arts, and moneys distributed for tourism promotion shall be in addition to and may not be used to replace or supplant any other funding by the legislative body of the county.

~~(f)~~(h) As used in this section, "tourism promotion" includes activities intended to attract visitors for overnight stays, arts, heritage, and cultural events, and recreational, professional, and amateur sports events. Moneys allocated to tourism promotion in a class AA county shall be allocated to nonprofit organizations formed for the express purpose of tourism promotion in the county. Such organizations shall use moneys from the taxes to promote events in all parts of the class AA county.

~~(g)~~(i) No taxes collected under this section maybe used for the operation or maintenance of a public stadium that is financed directly or indirectly by bonds to which the tax is pledged. Expenditures for operation or maintenance include all expenditures other than expenditures that directly result in new fixed assets or that directly increase the capacity, life span, or operating economy of existing fixed assets.

~~(h)~~(j) No ad valorem property taxes may be used for debt service on bonds issued for a public stadium that is financed by bonds to which the tax is pledged, unless the taxes collected under this section are or are projected to be insufficient to meet debt service requirements on such bonds.

~~(i)~~(k) If a substantial part of the operation and management of a public stadium that is financed directly or indirectly by bonds to which the tax is pledged is performed by a nonpublic entity or if a public stadium is sold that is financed directly or indirectly by bonds to which the tax is pledged, any bonds to which the tax is pledged shall be retired. This subsection (3)~~(i)~~(k) does not apply in respect to a public stadium under chapter 36. – RCW (sections 101 through 119 and 201 of this act) transferred to, owned by, or constructed by a public facilities district under chapter 36.100 RCW or a stadium and exhibition center.

~~(j)~~(*l*) The county shall not lease a public stadium that is financed directly or indirectly by bonds to which the tax is pledged to, or authorize the use of the public stadium by, a professional major league sports franchise unless the sports franchise gives the right of first refusal to purchase the sports franchise, upon its sale, to local government. This subsection (3)~~(j)~~(*l*) does not apply to contracts in existence on April 1, 1986.

If a court of competent jurisdiction declares any provision of this subsection (3) invalid, then that invalid provision shall be null and void and the remainder of this section is not affected.

**Sec. 502**. RCW 82.14.049 and 1992 c 194 s 3 are each amended to read as follows:

The legislative authority of any county may impose a sales and use tax, in addition to the tax authorized by RCW 82.14.030, upon retail car rentals within the county that are taxable by the state under chapters 82.08 and 82.12 RCW. The rate of tax shall be one percent of the selling price in the case of a sales tax or rental value of the vehicle in the case of a use tax. Proceeds of the tax shall not be used to subsidize any professional sports team and shall be used solely for the following purposes:

(1) Acquiring, constructing, maintaining, or operating public sports stadium facilities;

(2) Engineering, planning, financial, legal, or professional services incidental to public sports stadium facilities; ~~or~~

(3) Youth or amateur sport activities or facilities; or

(4) Debt or refinancing debt issued for the purposes of subsection (1) of this section.

At least seventy-five percent of the tax imposed under this section shall be used for the purposes of subsections (1), (2), and (4) of this section.

## PART VI
## MISCELLANEOUS

NEW SECTION. **Sec. 601**. Part headings used in this act are not any part of the law.

NEW SECTION. **Sec. 602**. If any provision of this act or its application to any person or circumstance is held

invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. **Sec. 603**. (1) Sections 101 through 119 and 201 of this act constitute a new chapter in Title 36 RCW.

(2) Sections 209 through 219 of this act constitute a new chapter in Title 43 RCW.

NEW SECTION. **Sec. 604**. The referendum on this act is the only measure authorizing, levying, or imposing taxes for a stadium and exhibition center that may be put to a public vote. Should the act fail to be approved at the special election on or before June 20, 1997, the legislature shall not pass other legislation to build or finance a stadium and exhibition center, as defined in section 101 of this act, for the team affiliate.

NEW SECTION. **Sec. 605**. The legislature neither affirms nor refutes the value of this proposal, and by this legislation simply expresses its intent to provide the voter of the state of Washington an opportunity to express the voter's decision. It is also expressed that many legislators might personally vote against this proposal at the polls, or they might not.

NEW SECTION. **Sec. 606**. Notwithstanding any other provision of this act, this act shall be null and void in its entirety unless the team affiliate as defined in section 101 of this act enters into an agreement with the secretary of state to reimburse the state and the counties for the full cost of the special election to be held on or before June 20, 1997.

NEW SECTION. **Sec. 607**. (1) The secretary of state shall submit sections 101 through 604 of this act to the people for their adoption and ratification, or rejection, at a special election to be held in this state on or before June 20, 1997, in accordance with Article II, section 1 of the state Constitution and the laws adopted to facilitate its operation. The special election shall be limited to submission of this act to the people.

(2) The attorney general shall prepare the explanatory statement required by RCW 29.81.020 and transmit that statement regarding the referendum to the secretary of state no later than the last Monday of April before the special election.

(3) The secretary of state shall prepare and distribute a voters' pamphlet addressing this referendum measure following the procedures and requirements of chapter 29.81 RCW, except that the secretary of state may establish different deadlines for the appointment of committees to draft arguments for and against the referendum, for submitting arguments for and against the referendum, and for submitting rebuttal statements of arguments for and against the referendum. The voters' pamphlet description of the referendum measure shall include information to inform the public that ownership of the King Dome may be transferred to the public stadium authority and that the King Dome will be demolished in order to accommodate the new football stadium.

(4) A county auditor may conduct the voting at this special election in all precincts of the county by mail using the procedures set forth in RCW 29.36.121 through 29.36.139.

(5) Notwithstanding the provisions of RCW 29.62.020, the county canvassing board in each county shall canvass and certify the votes cast at this special election in that county to the secretary of state no later than the seventh day following the election. Notwithstanding the provisions of RCW 29.62.120, the secretary of state shall canvass and certify the returns from the counties no later than the ninth day following the special election.

(6) The secretary of state shall reimburse each county for the cost of conducting the special election in that county in the same manner as state primary and general election costs are reimbursed under RCW 29.13.047 (1) and (3).

(7) No other state, county, or local election shall be required or held on any proposition related to or affecting the stadium and exhibition center defined in section 101 of this act.

NEW SECTION. **Sec. 608**. Sections 606 and 607 of this act are necessary for the immediate preservation of the public peace, health,or safety, or support of the state government and its existing public institutions, and take effect immediately.

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF THURSTON

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| JORDAN BROWER,<br><br>Plaintiff,<br><br>v.<br><br>STATE OF WASHINGTON, RALPH MUNRO, Secretary of State,<br><br>Defendants. | No. 97 2 00964 0<br><br>COMPLAINT (AMENDED)<br>(Filed May 19, 1997) |

Plaintiff, amending his earlier complaint herein in its entirety, alleges:

1. NATURE OF ACTION

1.1 Plaintiff seeks declaratory and other relief with respect to the Seahawks Stadium Act (ESHB 2192) (hereinafter referred to as "Stadium Act"). (A true and correct copy of the Stadium Act was attached and incorporated into the original complaint filed herein. It is again incorporated herein by this complaint by reference.)

1.2 Plaintiff seeks to protect and preserve the legislative process, to preserve free and equal elections, and to preserve fundamental constitutional principles and to protect the public policy of the State of Washington.

2. JURISDICTION

2.1 Plaintiff seeks a declaration that the Stadium Act violates the Washington and United States Constitutions.

2.2 Plaintiff seeks a declaration that the Stadium Act violates fundamental principles and public policy of the State of Washington.

2.3 Jurisdiction and venue are proper in this court.

2.4 This action arises under RCW Ch. 7.24 and various provisions of the Washington Constitution, including but not limited to, those referred to below, and the First and Fourteenth Amendments to the United States Constitution.

3. PARTIES

3.1 Plaintiff, JORDAN BROWER, is a resident of Seattle and taxpayer of King County and the State of Washington. He is also a registered voter in Seattle, King County and the State of Washington.

3.2 STATE OF WASHINGTON is the state of Washington.

3.3 RALPH MUNRO is the Secretary of State of the State of Washington and is named in his official capacity.

4. BACKGROUND

4.1 On April 26, 1997, the Washington State legislature passed Engrossed Substitute House Bill 2192, the Stadium Act. The title to the Stadium Act is as follows:

> An act relating to a mechanism for financing stadium and exhibition centers and education technology grants; amending RCW 82.29A.130, 67.70.240, 67.70.042, 39.42.060, 43.79A.040, 36.38.101, 36.32.235, 39.04.010, 39.10.120, 67.28.180, and 82.14.049; reenacting and amending RCW 42.17.310; adding a new section to chapter 82.08 RCW; adding a new section

to chapter 82.14 RCW; adding new sections to chapter 67.70 RCW; adding new sections to chapter 43.330 RCW; adding a new section to chapter 36.38 RCW; adding a new section to chapter 39.30 RCW; adding a new chapter to Title 36 RCW; adding a new chapter to Title 43 RCW; creating new sections; providing a contingent expiration date; providing for the submission of certain sections of this act to a vote of the people; and declaring an emergency.

4.2 The Stadium Act was approved by the Governor of the State of Washington on April 26, 1997.

4.3 Section 605 of the Stadium Act provides:

> The legislature neither affirms nor refutes the value of this proposal, and by this legislation simply expresses its intent to provide the voter of the state of Washington an opportunity to express the voter's decision. It is also expressed that many legislators might personally vote against this proposal at the polls, or they might not.

4.4 Section 606 of the Stadium Act provides:

> Notwithstanding any other provision of this act, this act shall be null and void in its entirety unless the team affiliate as defined in section 101 of this act enters into an agreement with the secretary of state to reimburse the state and the counties for the full cost of the special election to be held on or before June 20, 1997.

4.5 Section 607 of the Stadium Act provides:

> (1) The secretary of state shall submit sections 101 through 604 of this act to the people for their adoption and ratification, or rejection, at a special election to be held in this state on or before June 20, 1997, in accordance with Article II, section 1 of the state Constitution and the laws adopted to facilitate its operation. The special election shall be limited to submission of this act to the people.
>
> (2) The attorney general shall prepare the explanatory statement required by RCW 29.81.020 and transmit that statement regarding the referendum to the secretary of state no later than the last Monday of April before the special election.
>
> (3) The secretary of state shall prepare and distribute a voters' pamphlet addressing this referendum measure following the procedures and requirements of chapter 29.81 RCW, except that the secretary of state may establish different deadlines for the appointment of committees to draft arguments for and against the referendum, for submitting arguments for and against the referendum, and for submitting rebuttal statements of arguments for and against the referendum. The voters' pamphlet description of the referendum measure shall include information to inform the public that ownership of the KingDome may be

transferred to the public stadium authority and that the KingDome will be demolished in order to accommodate the new football stadium.

(4) A county auditor may conduct the voting at this special election in all precincts of the county by mail using the procedures set forth in RCW 29.36.121 through 29.36.139.

(5) Notwithstanding the provisions of RCW 29.62.020, the county canvassing board in each county shall canvass and certify the votes cast at this special election in that county to the secretary of state no later than the seventh day following the election. Notwithstanding the provisions of RCW 29.62.120, the secretary of state shall canvass and certify the returns from the counties no later than the ninth day following the special election.

(6) The secretary of state shall reimburse each county for the cost of conducting the special election in that county in the same manner as state primary and general election costs are reimbursed under RCW 29.13.047 (1) and (3).

(7) No other state, county, or local election shall be required or held on any proposition related to or affecting the stadium and exhibition center defined in section 101 of this act.

4.6 Section 608 of the Stadium Act contains an "emergency" clause which provides:

> Sections 606 and 607 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately.

4.7 The title to the Stadium Act contains more than one subject.

4.8 The Stadium Act does not contain one of the subjects contained in the title to the act.

4.9 The Stadium Act, in principal measure, provides for the construction of a new football stadium, essentially funded at taxpayer expense, for the potential owner of the Seattle Seahawks professional football team.

4.10 The Stadium Act provides that its substantive provisions will be submitted for approval to the voters of the State at a special election to be held in June 1997, provided the "team affiliate" (hereinafter "Team Affiliate") signs an agreement to pay for the election.

4.11 If the voters approve the Stadium Act, the Team Affiliate says it will buy the Seahawks and will use the new stadium for their performances. If the voters do not approve the Stadium Act, the Team Affiliate says that it will not buy the Seahawks.

4.12 This special election provided for in the Stadium Act is for the benefit of a private entity or party.

4.13 The Stadium Act gives the Team Affiliate the power to veto the Stadium Act.

4.14 The Stadium Act gives the Team Affiliate a power to vote or take action having the effect of a vote which vote or action is unequal to the power of voters like Plaintiff to vote.

4.15 Since the legislature expressly stated in Section 605 that it does not care whether or not the Stadium Act is ratified by the voters then it must necessarily follow that the subject matter of the Stadium Act and provisions of Sections 606 and 607 are not "emergencies" and are not necessary for the "immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions."

4.16 Section 606 of the Stadium Act does not call for action which is "necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions."

4.17 Section 607 of the Stadium Act does not call for action which is "necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions."

4.18 An actual, definite, and substantial controversy has arisen and exists between the parties as to the constitutionality of the Stadium Act. Plaintiff desires a declaration and determination of the validity of the act.

## 5. Causes of action

5.1 The Stadium Act violates the Washington Constitution in several respects, including but not limited to the violations described below:

5.1.1 The Stadium Act violates Article 2, Section 19 of the Washington Constitution.

5.1.2 The Stadium Act is an unconstitutional delegation of a veto power in violation of Article 1, Sections 1,

12, 19, 29, 30, and 32 Article 2, Section 1, and Article 3, Section 12 of the Washington Constitution.

5.1.3 The Stadium Act violates Article 1, Section 1 and Article 2, Sections 1, and 41 of the Washington Constitution. Those provisions require, among other things, that laws not become effective until ninety (90) days after adjournment of the legislative session.

5.1.4 The Stadium Act is an unconstitutional grant of a power of vote which is not equal to the power of other registered voters in the state of Washington in violation of Article 1, Sections 12 and 19.

5.1.5 The Stadium Act is an unconstitutional grant of a privilege not granted to others in violation of Washington in violation of Article 1, Section 12.

5.2 The Stadium Act interferes with Plaintiffs' free and equal right of suffrage in violation of Article 1, Section 19, of the Washington Constitution and the First and Fourteenth Amendments to the United States Constitution.

5.3 The Stadium Act is contrary to fundamental principles in violation of article 1, section 32, of the Washington Constitution.

5.4 The Stadium Act is in violation of Article VIII, Section 5 of the Washington Constitution.

5.5 The Stadium Act violates public policy of the State of Washington.

5.6 The Stadium Act violates fundamental principles and public policy of the State of Washington in that provides and [sic] illegal allocation of political opportunity.

5.7 The unconstitutional or unlawful provisions of the Stadium Act are not severable from the remainder of the Act.

6. NEED FOR IMMEDIATE RELIEF BY THIS COURT

6.1 This controversy is ripe for adjudication. Plaintiff and other taxpayers and electors will suffer substantial hardship from a delay in resolution of these issues, and the passage of time will not render these issues any more concrete or fit for judicial decision.

6.2 There are few if any factual issues presented by this Complaint. The Complaint presents significant questions of law under the Washington Constitution and the United States Constitution.

6.3 The issues are of substantial public interest and should be resolved by this court.

7. PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully asks this Court:

7.1 For a judgment declaring that the Stadium Act is invalid under the Washington Constitution and the United States Constitution.

7.2 For a judgment declaring that the Stadium Act is invalid under the public policy of the State of Washington.

7.3 For Plaintiffs costs, including reasonable attorneys' fees.

7.4 For such other and further relief, including injunctive relief, as the Court deems just.

May 16, 1997.

EUGSTER HASKELL P.S.C.

By /s/ Stephen K. Eugster
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SUPERIOR COURT OF WASHINGTON
FOR THURSTON COUNTY

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| JORDAN BROWER,<br>Plaintiff,<br>v.<br>STATE OF WASHINGTON, RALPH MUNRO, Secretary of State,<br>Defendants.<br>And<br>FOOTBALL NORTHWEST, a Washington general partnership,<br>Intervenor-Defendant. | NO. 97 2 00964 0<br>DECLARATION OF ALLEN D. ISRAEL<br>[September 23, 1997] |

ALLEN D. ISRAEL declares, upon penalty of perjury under the laws of the State of Washington, as follows:

1. I am the Assistant Secretary and principal attorney for Football Northwest LLC ("FNW"). FNW and the Intervenor in this action are each indirectly wholly-owned by Mr. Paul G. Allen of Mercer Island, Washington.

2. On August 26, 1997, FNW purchased substantially all of the assets of Seattle Seahawks, Inc., including the Seattle Seahawks National Football League professional football franchise ("Seahawks"). Prior to August 26, 1997, neither FNW nor any affiliate of FNW including Mr. Paul G. Allen had any interest in the Seahawks other

than an option to purchase which the Intervenor in this matter acquired on April 20, 1996.

3. Based upon representations made by the sellers in connection with the option and purchase of the Seahawks, it is my understanding and belief that prior to August 26, 1997, and from at least April 20, 1996, Seattle Seahawks, Inc. was majority owned and controlled by Mr. Kenneth E. Behring, a resident of Danville California.

DATED: September 23, 1997 at Seattle, Washington.

/s/ Allen D. Israel
Allen D. Israel

**The Seattle Times WEB ARCHIVE**

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**Local News**: *Wednesday, June 18, 1997*

**Stadium measure is passing**

*By David Schaefer and David Postman*
*Seattle Times staff reporters*

**Background & related info.**

Paul Allen's $5 million campaign-spending spree for a new football stadium bought victory in only seven of the state's 39 counties – but they are the right counties.

A sizable "yes" vote for Referendum 48 in the populous Puget Sound area appears to have overcome massive anti-stadium sentiment among voters in Eastern Washington and virtually every other corner of the state.

Referendum 48 was narrowly ahead this morning, with 50.6 percent of the vote, as counting of remaining absentee and mail-in ballots resumed. If that lead holds up, as expected, the Kingdome will be demolished and replaced with a-72,000-seat outdoor stadium financed with hotel-motel taxes, new lottery games, admission and parking taxes and a sales-tax exemption.

Victory would also ensure that the Seattle Seahawks become the property of Allen, a Microsoft co-founder who is reportedly the eighth-richest man in the world.

Allen spent $1.7 million to persuade the Legislature to call for yesterday's statewide vote, $4.2 million to pay for the election itself, and a record $5 million for a pro-

stadium media blitz that saturated the airwaves during the six-week campaign.

He never made public campaign appearances, except in television commercials. But last night, he took the stage twice during an election party at Union Station, playing guitar with The Beatniks, a raucous rock band, as Seahawk cheerleaders danced to the music.

Allen spoke only briefly but wasn't ready to declare victory.

"This is not a sure thing yet," he said shortly after midnight, as he thanked volunteers and supporters. "But we're extremely optimistic."

Referendum 48 was winning a strong majority in six counties in the Puget Sound area – King, Pierce, Snohomish, Kitsap, Thurston and Island counties – that are all within easy driving distance of the planned new stadium. East of the Cascades, it led only in Benton County.

By contrast, the measure was being clobbered in Spokane and Clark counties.

In a new twist for a statewide election, voters in 27 counties cast their ballots entirely by mail. All ballots had to be postmarked no later than yesterday.

David Brine, a spokesman for the Secretary of State's Office, said officials can't estimate how many more of those ballots will arrive in the mail. But state election officials aren't expecting large numbers of additional ballots in those mail-in counties.

King County, which was the state's only large county not to have a mail-only ballot, has an unknown number of absentee ballots yet to be counted, said Brine. But Referendum 48 was winning solidly in King County, making it unlikely that uncounted absentee ballots will change the result.

State election officials believe about 50 percent of the state's registered voters cast ballots.

**TV blitz worked, says adviser**

Bob Gogerty, the Seattle consultant who helped direct the statewide campaign, said he believes the electorate began swaying their way about three weeks ago, when television commercials explained the key points of Allen's message.

The ads stressed that Referendum 48 didn't include a general tax increase. Gogerty said those ads helped change many "no" voters to at least "undecided."

The campaign also ran commercials featuring Allen promising voters they would have the final word on whether he bought the team.

More than half the campaign budget was spent on TV ads.

But the ads didn't change the minds of voters in Spokane and the Vancouver, Wash., area. Gogerty said that vote was more anti-Seattle than anti-stadium.

"They just thumbed their noses at Seattle," Gogerty said. "I can't explain it any other way. It was a chance for them to strike back at Seattle."

But if there were few cheers in Eastern Washington, there were some a little farther east, in the National Football League offices, according to a former Seahawk owner.

John Nordstrom, whose family once owned the team and who campaigned on Allen's behalf, said the NFL powers are thrilled. "They all had their fingers crossed," he said. "Seattle is an important market. They didn't want to let that go."

In recent years, voters in seven cities trying to keep an existing NFL franchise or corral a new team have approved new stadiums.

**Close enough for cigars**

If Referendum 48 had failed, Allen said he will would [sic] not go through with his option to buy the Seahawks. That would have left the team in the hands of owner Ken Behring.

Last year, Behring tried to move the team to Southern California, only to have the moving vans sent back to Seattle after protests by NFL Commissioner Paul Tagliabue and lawsuits from King County and the State.

The lawsuits were put on hold when Allen stepped in as a prospective buyer. It was unknown whether the NFL would have intervened again had Referendum 48 failed.

Stadium opponents took some solace in how tight the race was. They said Allen's millions should have bought a much more comfortable win. The opposition groups spent only about $130,000.

"It's like the Seahawks playing against a high-school football team and only winning by two points," said King County Councilwoman Maggi Fimia, a vigorous opponent who was so excited by the close race that she fired up a fat cigar at the "Stop Stadium Madness" party.

State Rep. Helen Sommers, D-Seattle, said voters likely didn't understand all the complicated details of the financing plan.

Brian Livingston, founder of "No on 48," said, "The problem is next year this will happen again. There is no limit to the special interests who can pay $5 million and get a quickie special election on the ballot. We must never allow our politicians to sell our ballot box again."

However, Gov. Gary Locke, who backed the referendum, defended Allen's spending.

"When you have a special election and there are so many misconceptions . . . it required a massive education campaign," Locke said. "I don't have any problem with what he is spending."

**Stadium authority to be formed**

Almost immediately, the King County Council is to begin the procedure to transfer the Kingdome and its site to a new Public Stadium Authority. That agency will own the new stadium and contract with Allen to design, build and operate it.

The revenues generated by Referendum 48 will pay off the $127 million Kingdome debt. Part of that debt, from roof repairs in 1994, was costing the county's general fund $5.2 million a year.

Bert Kolde, vice chairman of Football Northwest, the group Allen set up to buy the Seahawks, said the first order of business is working with the Metropolitan King County Council on a plan to raze the Kingdome and replace it.

Chris Vance, chairman of the County Council's Budget Committee, said the county will comply but predicted it will take a while to work out the details.

Allen's investment in the Seahawks so far is believed to exceed $40 million. In addition to the more than $10 million spent getting Referendum 48 on the ballot and approved, Allen spent about $10 million on new players and put down a reported $20 million deposit on the team. The team's price is $200 million, according to Football Northwest.

**The financing package**

Under Referendum 48, the current 2 percent tax on hotel rooms in King County will be extended to 2020, there will be new lottery games dedicated to the stadium financing, and there will be a tax on stadium tickets and parking.

Public costs of construction are to be capped at $300 million – although the cost of retiring bonds over 20 years will be about double that. Allen is to pay $50 million in cash, sell $50 million worth of personal seat licenses, and cover any cost overruns.

**Background & related info.**

*Keeping Seahawks spurred 'yes' votes*

*Steve Kelley: Immaculate election for Hawks?*

*As stadium vote sways, so does Moon's mood*

*Election unlike any other for Seahawk employee*

*The real work on the stadium is just beginning for builder*

*San Francisco stadium issue passes*

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